

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE**

FIFTY-NINTH MEETING

July 13-15, 2016

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chair;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
 - A. The identity or cultural affiliation of cultural items, or
 - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items, including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary of the Interior in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (2006).

Six Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. At least two of the members must be traditional Indian religious leaders. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.nps.gov/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the *Federal Register* on February 2, 2016 (81 FR 5481-5484).

The 59th Meeting of the Review Committee

The 59th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Melanie O'Brien, DFO, at 8:30 a.m., on Wednesday, July 13, 2016. Ms. O'Brien confirmed the attendance of the Review Committee members, and stated that the Federal Advisory Committee Act (FACA) requirements were met regarding the publication of the meeting notice and agenda prior to the meeting. Ms. O'Brien welcomed newly appointed Review Committee member, Ms. Lauren Peters. Mr. Tony Incashola, Confederated Salish and Kootenai Tribes of the Flathead Reservation, offered a traditional opening on July 13, 2016. Mr. Francis Auld, Confederated Salish and Kootenai Tribes of the Flathead Reservation, offered a traditional opening on July 14, 2016. Mr. Armand Minthorn offered a traditional opening on July 15, 2016. Ms. O'Brien introduced the National NAGPRA Program staff present at the meeting.

Review Committee members present –

Mr. Armand Minthorn – Chair

Ms. Heather Edgar

Ms. LindaLee (Cissy) Farm

Mr. Patrick Lyons

Mr. Dennis O'Rourke

Ms. Lauren Peters

Mr. Steve Titla (Mr. Titla was present for July 13 and part of July 14.)

Designated Federal Officer present –

Ms. Melanie O'Brien, Manager, National NAGPRA Program, National Park Service

National Park Service/Department of the Interior staff in attendance –

Mr. David Tarler, Training, Regulations, and Civil Enforcement Coordinator, National NAGPRA Program, National Park Service

Ms. Lesa Koscielski, Review Committee Coordinator, National NAGPRA Program, National Park Service

Ms. Carla Mattix, Attorney-Advisor, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior

Mr. Stephen Simpson, Senior Attorney, Division of Indian Affairs, Office of the Solicitor, Department of the Interior

Persons in attendance during part or all of the meeting, in person or by telephone (names and affiliations as provided by attendees) –

Ms. Anne Amati, University of Denver Museum of Anthropology, Denver, CO

Mr. Shane Anton, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, Scottsdale, AZ

Ms. Caroline Antone, Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, Maricopa, AZ

Ms. Risa Arbolino, Smithsonian Institution, National Museum of the American Indian, Washington, DC

Mr. Allen Armijo, Pueblo of Santa Ana, New Mexico, Bernalillo, NM

Governor Myron Armijo, Pueblo of Santa Ana, New Mexico, Santa Ana, NM

Ms. Riley Auge, University of Montana Curation Facility, Missoula, MT

Mr. Francis Auld, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Elmo, MT

Mr. Larry Benallie, Gila River Indian Community of the Gila River Indian Reservation, Arizona, Sacaton, AZ

Ms. Jan Bernstein, Bernstein & Associates, Denver, CO

Ms. Cynthia Ann Bettison, Western New Mexico University Museum, Silver City, NM

Mr. Bill Billeck, Smithsonian Institution, National Museum of the American Indian, Washington, DC

Mr. Michael Black Wolf, Fort Belknap Indian Community of the Fort Belknap Indian Reservation, Montana, Harlem, MT

Ms. Christina Cain, University of Colorado Museum of Natural History, Boulder, CO

Lt. Gov. James Candelaria, Pueblo of San Felipe, New Mexico

Ms. Rosemary Caye, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Elmo, MT

Ms. Amanda Cervantes, University of Montana, Missoula, MT

Mr. Perry Chocktoot, the Klamath Tribes, Chiloquin, OR

Ms. Phoebe Coleman, National NAGPRA Program, Washington, DC

Ms. Jacqueline Cook, Confederated Tribes of the Colville Reservation, Nespelem, WA
 Mr. Buck Damone, Bureau of Land Management, Buffalo Field Office, Buffalo, WY
 Ms. Diana Dretske, Lake County Discovery Museum, Wauconda, IL
 Mr. Clayton Dumont, Klamath Tribes and San Francisco State University, Concord, CA
 Ms. Susie Fishman-Armstrong, Sam Noble Oklahoma Museum of Natural History, Norman, OK
 Ms. Harrison Gage, National NAGPRA Program, Washington, DC
 Mr. Christopher Garcia, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Mr. Julian Garcia, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Ms. Angela Garcia-Lewis, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, Scottsdale, AZ
 Ms. Sarah Glass, National NAGPRA Program, Washington, DC
 Ms. Sheila Goff, History Colorado, Denver, CO
 Ms. Erin Gredell, Yale Peabody Museum of Natural History, New Haven, CT
 Mr. Weber Greiser, Historical Research Associates, Inc., Missoula, MT
 Mr. Kirk Halford, Bureau of Land Management, Idaho State Office, Boise, ID
 Ms. Lourdes Henebry-DeLeon, Central Washington University, Ellensburg, WA
 Ms. Melody Henry, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana, Box Elder, MT
 Mr. Richard Hughes, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Ms. Andrea Hunter, The Osage Nation, Pawhuska, OK
 Mr. Tony Incashola, Confederated Salish and Kootenai Tribes of the Flathead Reservation, St. Ignatius, MT
 Mr. Jordan Jacobs, University of California – Berkeley, Berkeley, CA
 Mr. Michael Knife Chief, Pawnee Nation of Oklahoma, Pawnee, OK
 Ms. Karly Law, University of Montana, Missoula, MT
 Mr. Marc Levine, Sam Noble Oklahoma Museum of Natural History, Norman, OK
 Mr. Eugene Lujan, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Ms. Martha Martinez, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, Scottsdale, AZ
 Mr. Timothy Menchego, Pueblo of Santa Ana, Santa Ana Pueblo, NM
 Mr. Juan Montoya, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Mr. Lawrence Montoya, Pueblo of Santa Ana, New Mexico, Santa Fe, NM
 Ms. Shannon Morrow, U.S. Dept. of the Interior, Bureau of Indian Affairs, Reston, VA
 Ms. Nell Murphy, American Museum of Natural History, New York, NY
 Ms. Beth Nawara, Lake County Discovery Museum, Wauconda, IL
 Ms. Angela Neller, Wanapum Heritage Center, Columbia Plateau Inter-Tribal Repatriation Group, Beverly, WA
 Ms. Ceara Nicholson, University of Montana, Missoula, MT
 Ms. Megon Noble, University of California – Davis, Davis, CA
 Ms. Lara Noldner, University of Iowa, Office of the State Archaeologist, Iowa City, IA
 Ms. Sarah O'Donnell, The Osage Nation, Pawhuska, OK
 Mr. Anthony Ortiz, Pueblo of San Felipe, New Mexico
 Mr. Bendolly Ortiz, Pueblo of San Felipe, New Mexico
 Mr. Ricardo Ortiz, Pueblo of San Felipe, New Mexico
 Mr. Andrew Osborne, Lake County Discovery Museum, Wauconda, IL
 Mr. Eugene Otero, Pueblo of Santa Ana, New Mexico, Santa Ana Pueblo, NM
 Mr. Kenyon Padilla, Pueblo of San Felipe, New Mexico
 Ms. Emily Palus, Bureau of Land Management, Washington, DC
 Ms. Annie Pardo, U.S. Dept. of the Interior, Bureau of Indian Affairs, Washington, DC
 Ms. Ruby Peterson, Crow Nation of Montana, Crow Agency, MT
 Ms. Mary Adele Rogers, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Elmo, MT
 Ms. Melanie Ryan, U.S. Bureau of Reclamation – Mid-Pacific Region, Sacramento, CA
 Mr. Paul Sandberg, University of Oklahoma, Sam Noble Oklahoma Museum of Natural History, Norman, OK
 Ms. Cheryl Seidner, Wiyot Tribe, California, Loleta, CA
 Ms. Lauren Sieg, Smithsonian Institution, National Museum of the American Indian, Washington, DC
 Mr. Phillip Shelley, Pueblo of Santa Ana, New Mexico, Santa Ana Pueblo, NM
 Ms. Pinu'u Stout, Pueblo of San Felipe, New Mexico
 Ms. Jackie Swift, Smithsonian Institution, National Museum of the American Indian, Suitland, MD
 Mr. Robert Taylor, Nez Perce Tribe, Lapwai, ID
 Ms. Jayne-Leigh Thomas, Indiana University, Bloomington, IN

Ms. Sally Thompson, Cultural Heritage Consulting, Missoula, MT
Ms. Shelby Tisdale, Fort Lewis College, Center of Southwest Studies, Durango, CO
Mr. Thomas Torma, Wiyot Tribe, California, Loleta, CA
Mr. Michael Walters, University of Oklahoma, Sam Noble Oklahoma Museum of Natural History, Norman, OK
Mr. Adam Watson, American Museum of Natural History, New York, NY
Ms. Claire Wilbert, Bernstein & Associates, Seattle, WA
Ms. Reylynne Williams, Gila River Indian Community of the Gila River Indian Reservation, Arizona, Sacaton, AZ
Mr. Alvin Windy Boy, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana, Box Elder, MT

Report: National NAGPRA Program Report on NAGPRA Implementation in FY 2016

Ms. O'Brien provided a brief update on NAGPRA implementation by the National NAGPRA Program for the fiscal year to date. The National NAGPRA Program has received 61 new or amended inventories and 21 new or amended summaries. On behalf of Federal agencies and museums, a total of 144 notices were published in the Federal Register. On behalf of the Assistant Secretary for Fish and Wildlife and Parks, the National NAGPRA Program has made a concerted effort to address civil penalty allegations, and has completed investigations of six museums that were alleged to have failed to comply with NAGPRA. The NPS recently announced that FY 2016 NAGPRA grants totaling 1.6 million dollars will be awarded to 14 Indian tribes and 14 museums. Ms. O'Brien stated that the activities of the National NAGPRA Program during FY 2016 will be detailed in the year-end report, and will be available on the National NAGPRA Program website.

Ms. O'Brien stated that one of her priorities as Program Manager for the past year has been to increase and improve the ability of the National NAGPRA Program to communicate with NAGPRA constituents. Outreach was effective through in-person trainings by National NAGPRA Program staff and in partnership with the National Preservation Institute (NPI). NPI offered eight NAGPRA-specific courses this year, and the National NAGPRA Program provided 24 scholarships to participants. The National NAGPRA Program conducted six webinars. Its YouTube channel includes an eight-part video series on various NAGPRA topics (over 2,000 views) and recorded webinars (over 800 views), all of which are available on-demand. In addition, the National NAGPRA Program offers a monthly newsletter and a newly launched Facebook page. Information on the newsletter, Facebook links, and additional training opportunities can be found on the National NAGPRA Program website. The National NAGPRA Program is working on a new website, as well as new tools to aid NAGPRA compliance. In addition, the National NAGPRA Program is working with the Geographic Information Systems (GIS) Office of NPS to develop an interactive map that will consolidate information from a variety of sources, such as the Indian Claims Commission map, Indian land cessions map, reservation boundaries, and tribal contact information.

Review Committee Questions and Discussion

In response to a question for clarification of the civil penalties process, Ms. O'Brien directed the Review Committee to the National NAGPRA website for information on the process for alleging a failure to comply, and for summaries of civil penalty allegations and investigations (available in each year-end report). Mr. Titla expressed concern that the statute does not contain a defined timeline for the investigation process. Ms. Mattix stated that, while the section of the statute pertaining to civil penalties was not technically within the purview of the Review Committee, Mr. Titla's comments would be noted for consideration during discussions of amendments to the NAGPRA regulations. Ms. Mattix stated that individuals seeking additional information on the civil penalties portion of the statute can contact the National NAGPRA Program. Mr. Titla stated that information on past allegations should be posted publically. Mr. Minthorn stated that knowledge of past allegations might assist Indian tribes in NAGPRA work. Ms. O'Brien stated that allegations are not always substantiated, that the Department of Interior's approach is to consider the civil penalty process as a means to achieve compliance with NAGPRA, and that the National NAGPRA Program offers assistance to any museum wishing to fully comply with the requirements of NAGPRA.

On behalf of the National NAGPRA Program, Ms. O'Brien welcomed both the newest member of the Review Committee, Ms. Lauren Peters, who is a member of the Adgaadux Tribe of King Cove and Alaska Native Advisor to Fort Ross, and the newest National NAGPRA Program staff member, Ms. Sarah Glass, the Notice and Grants Coordinator. Ms. O'Brien stated that Mr. Titla's term will expire in April 2017, and that the National NAGPRA Program will publish a notice in the Federal Register soliciting nominations for a traditional Indian religious leader from Indian tribes, Native Hawaiian organizations, and traditional religious leaders.

Presentation: Confederated Salish and Kootenai Tribes of the Flathead Reservation

Ms. Rosemary Caye, Confederated Salish and Kootenai Tribes of the Flathead Reservation, stated she was the Kootenai NAGPRA Coordinator and has worked with the Kootenai Culture Committee since 1997. The tribe has been working to return ancestors since prior to the passage of NAGPRA. Early efforts began with the discovery of sacred items on display at the University of Montana. Ms. Caye stated that the first repatriation to the tribe, which included 19 individuals, took place in 2003. Ms. Caye went on to describe several challenges the tribe faces in NAGPRA implementation. The process can be very lengthy, with museum staff turnover presenting additional delays; the burden some institutions place on Indian tribes to show cultural affiliation is unnecessarily high; and information supplied by expert museum staff can be incorrect or difficult to interpret and identify. The 182 notifications regarding collections that Ms. Caye has received from Federal agencies and museums only underscores the fact that NAGPRA implementation at the tribal level is a significant undertaking, especially for those with limited staff and/or resources. The Kootenai Culture Committee and Elders have been very supportive of this work, and several institutions have been good working partners. Ms. Caye stressed the importance of Federal agency and museum NAGPRA staff working directly with Indian tribes to learn about tribal relationships, culture, and traditions. Ms. Caye added that a regional group comprised of seven Indian tribes has been working together for the return of certain ethnographic collections.

Mr. Tony Incashola, Confederated Salish and Kootenai Tribes of the Flathead Reservation, stated he was the Director of the Salish Culture Committee and has worked with the culture committee for 41 years. Mr. Incashola was raised traditionally by his grandparents, speaking Salish as his first language. He described his work with the tribe's Traditional Elders Council to preserve knowledge and history through audio and photo archives. The Elders were reluctant at first to share information due to lack of trust of non-Natives attributable to past misuse of sensitive information. Mr. Incashola stated that it is very difficult for non-Native people to fully understand the personal and spiritual connections of Native people with their traditional way of life. The misuse and display of cultural items is harmful to Native communities; it destroys their culture, values, and people. The Elders acknowledge the importance of sacred sites as a bridge between the past and the future, and they work to instill this value in the tribe's youth. Mr. Incashola stated that the tribe's working relationships with several institutions have improved through time, resulting in increased communication and consultation. Mr. Incashola stressed the importance of ongoing education; NAGPRA constituents need to understand and acknowledge the differences among Indian tribes' cultures, language, traditions, and histories. Better understanding can help foster good working relationships between Indian tribes and Federal agencies and museums in ongoing NAGPRA implementation.

The Review Committee thanked Ms. Caye and Mr. Incashola for their presentations. Mr. Minthorn commended the tribe for their work, and said it could serve as a good example for others.

Presentation: Columbia Plateau Inter-Tribal Repatriation Group

Ms. Jacqueline Cook, Confederated Tribes of the Colville Reservation, stated that the Columbia Plateau Inter-Tribal Repatriation Group (CPITRG) consists of the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Indian Reservation, Nez Perce Tribe, and Wanapum Band of Priest Rapids, a nonfederally recognized Indian group. Ms. Cook was joined by Ms. Angela Neller, Wanapum Heritage Center, and Mr. Robert Taylor, Nez Perce Tribe. The CPITRG last provided an update on the Ancient One, also known as Kennewick Man, to the Review Committee at the November 2015 meeting in Norman, OK. At that meeting, Ms. Cook reported that the most recent study of DNA results, presented in June 2015, confirmed that the Ancient One is more closely related to the claimant Columbia Plateau tribes than any other current or past populations studied to date. The goal of the claimant tribes to jointly repatriate and rebury the Ancient One has not changed, and the tribes are working in consultation with the Army Corps of Engineers (COE). Ms. Cook stated that CPITRG is concerned with the COE's timeline for the Ancient One, and specifically noted the lengthy process undertaken by COE to determine cultural affiliation.

Ms. Cook stated that the CPITRG is concerned with the timelines and oversight in NAGPRA regulations for inadvertent discoveries. Unlike the collections provision, the inadvertent discoveries sections have no mechanism to advance the process, following the initial notification and consultation requirements; no response deadlines for tribal inquiries or disposition requests; and no recourse for resolving disputes or contesting actions. Ms. Cook stated that,

although the regulations allow and encourage comprehensive cultural affiliation agreements between Federal agencies and Indian tribes or Native Hawaiian organizations to establish a plan to address discoveries, in the CPITRG's experience, many Federal agencies have not created such agreements. Without other options to hasten the process, the CPITRG proactively completed a cultural affiliation study for the Ancient One, provided it to the COE, and are pursuing legislative action.

The CPITRG made the following recommendations to amend the discoveries sections of the regulations:

- Provide timelines for completing the process of disposition of cultural items discovered on Federal lands after 1990;
- Institute a milestone checklist for consultation, examination by physical anthropologist, reporting cultural affiliation, drafting a Notice of Intended Disposition, and publication of the notice in the appropriate newspapers;
- Develop training for tribes and Federal agencies on drafting and implementing comprehensive cultural affiliation agreements; and
- Amend NAGPRA to expressly authorize the Review Committee to facilitate the resolution of disputes regarding the identity, cultural affiliation, or disposition of cultural items discovered on Federal lands after November 16, 1990.

Review Committee Questions and Discussion

The Review Committee thanked Ms. Cook for her presentation. Review Committee members agreed with the recommendations of the CPITRG. In response, Ms. Mattix clarified that the Ancient One, or Kennewick Man, was a complicated inadvertent discovery because there are no special provisions in the NAGPRA statute and regulations addressing extremely ancient ancestral remains. In general terms, the process for discoveries under Section 3 of the statute is entirely separate from the process for collections under Section 7. Ms. Mattix stated that a full review of the regulations is currently underway, and one topic under consideration is the lack of timelines for disposition under Section 3. Ms. Mattix acknowledged the CPITRG's valuable comments and recommendations, and added that feedback on areas of the regulations that cause barriers to implementation is extremely valuable. Ms. O'Brien encouraged anyone with specific recommendations on amending the regulations to provide them to the Review Committee through presentations and public comment, or submit them directly to the National NAGPRA Program. In addition, any proposed rules will include an opportunity for comment. Ms. Mattix stated that the Review Committee can participate through its role to assist in the development of regulations, even though the Review Committee does not have specific oversight concerning discoveries under Section 3.

Action Item: Initial Discussion of the Review Committee 2016 Report to Congress

Ms. O'Brien stated that the subcommittee on the 2016 report to Congress is Mr. O'Rourke and Mr. Lyons. Mr. O'Rourke stated that immediately following the meeting, the subcommittee would begin drafting the 2016 report to Congress, following the format and distribution considerations agreed upon by the Review Committee at its 2015 meetings. Of particular interest will be barriers to, and positive examples of, NAGPRA implementation, as well as any suggestions for improving the report in order to make it as effective a document as possible. Mr. Lyons stated that the subcommittee has discussed more widespread dissemination of the report, to include tribal leaders, tribal historic preservation offices, and professional museum and archeological organizations. The subcommittee asked the full Review Committee whether the report should cite statistics and historical data regarding funding levels for the National NAGPRA Program and the grants program as barriers to implementation, and to support a recommendation for additional funding.

Public Comment – July 13, 2016

Ms. Sheila Goff/Ms. Anne Amati/ Ms. Christina Cain

Ms. Sheila Goff, NAGPRA Liaison, History Colorado, provided a brief update on the work of the Colorado Lands for Repatriation and Reburial Workgroup. Ms. Goff was joined by Ms. Anne Amati, NAGPRA Coordinator, University of Denver Museum of Anthropology, and Ms. Christina Cain, Anthropology Collections Manager, University of Colorado Museum of Natural History. The Colorado Lands for Repatriation and Reburial Workgroup

was formed (through tribal initiation) to identify state, tribal, and Federal agency lands within Colorado suitable for reburial of Native American human remains and funerary objects in the possession of Colorado museums and/or that originated in the state of Colorado that have been repatriated or dispositioned to tribes under NAGPRA. To date, the Colorado Lands for Repatriation and Reburial Workgroup has considered 21 requests, and has been able to favorably resolve 11 of them. Conflicts with agency governing authorities primarily related to unknown origin/origin outside of the state of Colorado have impeded a favorable resolution of the other 10 requests. Ms. Goff stated that tribes and museums have tried to creatively resolve these conflicts.

Ms. Anne Amati described a successful resolution. Under a joint effort, five institutions (the University of Denver Museum of Anthropology, History Colorado, University of Colorado Museum of Natural History, Colorado State University, and the Denver Museum of Nature and Science) and seven Indian tribes (Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Arapaho Tribe of the Wind River Reservation, Wyoming; and the Hopi Tribe of Arizona) reburied a total of 138 individuals. The University of Denver, through the Dean of Arts, Humanities, and Social Sciences, purchased a cemetery plot, and each of the different tribes participated in the reinterment ceremony. Ms. Cain stated that this was a momentous occasion for the University of Colorado, as it completed the transfer of control of all Native American human remains previously under the university's control.

Review Committee Questions and Discussion

The Review Committee commended the work of the Colorado Lands for Repatriation and Reburial Workgroup. Mr. Minthorn stated that this is a good example for dealing with the difficult issue of finding lands for the reburial of ancestors, and stressed the importance of Federal agencies, state agencies, museums, and Indian tribes working together to address this challenge. Mr. Minthorn asked what specific factors led to this project's success. Ms. Goff stated that this was a tribally led process. Ms. Amati stated that the relationships developed through the overall process allowed the parties to work together to resolve the challenges raised for this reburial. In addition, a NAGPRA repatriation grant helped fund travel for the tribal representatives. Ms. O'Brien stated that this might be a positive example that could be featured in the Review Committee's 2016 report to Congress.

Ms. Jayne-Leigh Thomas

Ms. Jayne-Leigh Thomas, NAGPRA Director, Indiana University-Bloomington, stated that the university held a successful three-day consultation event in March 2016 with 19 Indian tribes from 8 states. The consultation covered reburial within the State of Indiana, culturally unidentifiable collections, and tribal consortiums, and included tours of university facilities and Angel Mounds State Historic Site in southern Indiana. Ms. Thomas reiterated an earlier invitation for the Review Committee to meet at the university. Mr. Minthorn commended the efforts of the university, and stated that this was a good result of consultation.

Request: Pueblo of Santa Ana, New Mexico

Ms. O'Brien stated that the Pueblo of Santa Ana requested that the Review Committee make a finding of fact and facilitate the resolution of a dispute from the Review Committee pursuant to the Review Committee's responsibilities under NAGPRA at 25 U.S.C. 3006 (c)(3) and (4). The Review Committee's finding of fact and facilitation of dispute resolution does not take place in the setting of a formal hearing or adjudication. The Review Committee's role is to facilitate the informal resolution of disputes to help the parties informally negotiate a fair resolution of the matter. Any recommendation, finding, or other action of the Review Committee is advisory only and not binding on any party. The request from Santa Ana concerns the cultural affiliation and most appropriate claimant for human remains and associated funerary objects that are currently under the control of the American Museum of Natural History (AMNH). AMNH determined, in a Notice of Inventory Completion, that these human remains are culturally affiliated with the Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo), the Pueblo of San Felipe, and the Pueblo of Santa Ana. Following the publication of that notice, the Pueblo of Santa Ana and the Pueblo of San Felipe made separate requests for the repatriation of these human remains and associated funerary objects. Based on the information in their possession, AMNH could not determine a most appropriate claimant for these human remains. The Pueblo of Santa Ana is disputing AMNH's determination that the human remains are culturally affiliated with the Pueblo of San Felipe. The Pueblo of Santa Ana is also disputing that AMNH could not determine that Santa Ana is the most appropriate claimant. The Pueblo of Santa

Ana requested that the Review Committee review the record, make a finding of fact on the cultural affiliation of these human remains, and make a recommendation to the parties on resolving the dispute over which, if any, of the claimant tribes is the most appropriate one. A copy of the documentation was provided to the Review Committee members prior to the meeting and made available on the National NAGPRA Program website.

Presentation by the Pueblo of Santa Ana, New Mexico

Mr. Juan Montoya, Spiritual Leader, opened the presentation with an invocation. Governor Myron Armijo introduced the individuals present at the meeting in support of the Pueblo of Santa Ana, New Mexico, as follows: Mr. Phillip Shelley, Mr. Timothy Menchego, Mr. Julian Garcia, Mr. Lawrence Montoya, Mr. Richard Hughes, Mr. Allen Armijo, Mr. Christopher Garcia, Mr. Eugene Lujan, and Mr. Eugene Otero. Governor Armijo thanked the Review Committee for hearing the request. Mr. Montoya provided an oral traditional overview of the movement and settlement history of the Pueblo of Santa Ana, New Mexico.

Mr. Phillip Shelley, Tribal Historic Preservation Officer, provided a brief presentation on the complex picture of Pueblo prehistory, and detailed the Pueblo of Santa Ana's settlement history and migration routes, which encompassed the Galisteo Basin and the Paak'u site, where the human remains and associated funerary objects were excavated in the 1900s by the AMNH. (Additional excavations at the site were done by other institutions.)

Mr. Shelley summarized the archeological data showing the history and migration routes of the Santa Ana people, as well as the information gathered during a major ethnographic survey of the basin pursuant to the Galisteo Basin Sites Protection Act (GBSPA). Each pueblo in the state of New Mexico was invited to participate in the survey, and identify sites in the Galisteo Basin of ethnographic or ancestral importance to it. In accordance with its traditional values, the Pueblo of Santa Ana has expended a great deal of effort in meeting the tribe's obligations to the ancestors and the ancestral site of Paak'u. In 2012 and 2013, the Pueblo of Santa Ana were the recipients of over 200 individuals, originally collected at Paak'u, and under the control of the Maxwell Museum of Anthropology, the San Diego Museum of Man, and the Museum of Indian Arts and Culture. These individuals have been reinterred at Paak'u. Mr. Shelley concluded that, based on a preponderance of the evidence, the Pueblo of Santa Ana is the most appropriate claimant for the human remains under the control of AMNH.

Mr. Timothy Menchego, Tobacco and Fox Clan, Cultural Resource Coordinator with the Tribal Historic Preservation Office, stated that the traditional name of the people of the Pueblo of Santa Ana is the Tamaya, known as the Tamayame. Tamayame core values, representation, and traditional leadership have remained intact since the tribe's emergence. Mr. Menchego read a statement reflecting the tribe's cultural perspective. The Pueblo of Santa Ana has previously, solely and successfully reinterred Tamaya ancestors back to Paak'u, and is committed to completing the cultural and spiritual reinterment of all ancestors from Paak'u. The Pueblo of Santa Ana diligently followed cultural tradition, as well as NAGPRA. Mr. Menchego described some of the tribe's experiences with the repatriation process. The Pueblo of Santa Ana has no quarrel or dispute with other tribes, but only seeks to right a wrong done to the ancestors, and affirm the ancestors' affiliation to Tamaya and the Tamayame.

Mr. Julian Garcia, Eagle Clan, spoke on behalf of his people as a traditionalist. Mr. Garcia stated that his father had held many religious positions, and regularly spoke of the migration of the Santa Ana people. Upon leaving the Chaco Canyon area, the people split into two different groups. Through the guidance of their leaders, the Santa Ana people eventually reached Paak'u, where they established their homeland. This oral history has been affirmed by archeological, ethnological, and anthropological studies. Mr. Garcia stressed the importance of finishing the process and returning the ancestors to Paak'u.

Mr. Lawrence Montoya, Pine and Eagle Clan, Society Traditional Member and former governor, stated that the ancestors are waiting to be reburied, and the process leading to their reinterment needs to be finalized. The Santa Ana people have policies in place to accomplish the cultural affiliation and repatriation processes under NAGPRA. Mr. Montoya stated that the process to reinter the 200 human remains in 2012 and 2013 (described earlier) began while he was governor; it was the right thing to do.

Mr. Richard Hughes, legal counsel, stated that, given the ample anthropological, oral traditional, and archeological information possessed by AMNH, the museum is able to determine that the Pueblo of Santa Ana is the most appropriate claimant. Mr. Hughes summarized this evidence. Mr. Hughes also noted the lack of, or conflicting, evidence to support the historical presence of the Pueblo of San Felipe at the Paak'u site. Mr. Hughes noted that the Kewa Pueblo makes no claim in this instance.

Governor Armijo thanked the Review Committee for its consideration of this matter.

Presentation by the Pueblo of San Felipe, New Mexico

Mr. James Candelaria, Lieutenant Governor, opened the presentation with an invocation. Mr. Anthony Ortiz, Councilman and former governor, thanked the Review Committee for the opportunity to present the tribe's case. Mr. Anthony Ortiz stated that it is practically impossible for one Pueblo to claim sole affiliation with the human remains due to the complex migration history and prehistory of the Pueblo peoples. Following ancient practice, the Pueblo of San Felipe does not talk about religious matters. However, the Pueblo of San Felipe has provided AMNH and the Review Committee with information to show that it is culturally affiliated with the human remains. Mr. Anthony Ortiz summarized the migration history of the Pueblo of San Felipe, including their ties to the Paak'u site. The San Felipe people moved away from, but did not abandon their past settlements, and continue to practice religious and cultural traditional prayers in connection with these areas.

Mr. Ricardo Ortiz, Tribal Historic Preservation Officer and Land Management Specialist, stated that oral traditional practices at the Pueblo of San Felipe are reserved for pueblo members. As disclosure of this information is hurtful and sad for the San Felipe people, the tribal leaders have instructed the presenters not to divulge information other than what is necessary. Consequently, Mr. Ricardo Ortiz provided general details on the tribe's migration history. The San Felipe people believe that once a loved one is let go, he or she belongs to the Creator. Mr. Ricardo Ortiz stated that the Pueblo of San Felipe is not against the repatriation of the human remains to the Pueblo of Santa Ana. The tribe submitted this claim because its representatives did not receive the notifications required under NAGPRA. Mr. Ricardo Ortiz stated that some tribes do not file a claim for ancestors because of tribal restrictions, but that does not mean that they are not related to those ancestors. Similarly, each affiliated group should be able to make its own decisions about repatriation, or go on a pilgrimage to its ancestral sites without informing other groups or explaining their actions. Some information provided by the Pueblo of Santa Ana regarding the Pueblo of San Felipe was incorrect (specifically, Abel Sanchez was incorrectly identified as being governor of the Pueblo of San Felipe in 1986), which only serves to underscore the importance of Indian tribes being able to speak on their own behalf.

Mr. Ricardo Ortiz apologized that this matter had to come before the Review Committee, and stated that the Pueblo of San Felipe would have liked to settle this among the tribes. The Pueblo of San Felipe shared a video of tribal council leaders who were unable to travel to the meeting. Mr. Ricardo Ortiz translated their statements, which included information on migration patterns, cultural ties with neighboring tribes, the continued cultural practice of paying respect to past settlements, and the preservation of information through oral history. Mr. Anthony Ortiz stated that the Pueblo of San Felipe does not contest the Pueblo of Santa Ana's traditional association with Paak'u; accepts and supports the professional and carefully considered determination of the AMNH; and wishes to complete the process of reinterring their ancestors in their rightful resting place in accordance with tribal values and traditional practices. Mr. Candelaria thanked the Review Committee for the opportunity to present the tribe's case, and ended the presentation with a traditional closing.

Presentation by the American Museum of Natural History

Ms. Nell Murphy, Director of Cultural Resources, and Mr. Adam Watson, Post-Doctoral Fellow, AMNH, appeared telephonically before the Review Committee. Ms. Murphy stated AMNH's position that the human remains from Paak'u should be returned to their rightful descendant communities, and offered a brief history of the museum's compliance with respect to these human remains. The AMNH houses 37 individuals and 3 associated funerary objects from the Pueblo San Pedro Viejo site in New Mexico's San Bernalillo County. This site, also known as Paak'u, has a long, complex occupation history. AMNH initially found these human remains to be culturally unidentifiable given the ambiguities in museum documentation and in the published literature regarding the ethnicity, linguistic background, and migrations of the inhabitants of Paak'u. In 1998, the AMNH received a NAGPRA consultation grant to consult broadly on this and other sites in the Southwest. At that time, few tribes were in a position to participate, so a determination regarding cultural affiliation was made with only the information at hand.

Following the Pueblo of Santa Ana's claim of cultural affiliation with cultural items from Paak'u, the AMNH undertook a reevaluation of these inventories in March 2014. This reevaluation included consultation with 20 federally recognized tribes, extensive research, and discussions with recognized experts in Puebloan archeology and ethnology. Ms. Murphy summarized the multiple sources of archeological evidence that suggest Paak'u was a multiethnic community, with multiple groups recognizing ancestral ties to the site. The oral traditions from the Pueblo of Santa Ana indicate ancestral ties to the site of Paak'u, and are supported by several published accounts.

Oral traditions relayed during consultation with the Pueblo of San Felipe, though unpublished, include reference to Paak'u as a major ancestral site. Kewa Pueblo's traditional history was not explicitly indicated by any tribal representative, but museum records and expert opinion indicate that Paak'u similarly figured in that tribe's ancestral narrative. On balance, the evidence supports cultural affiliation of the individuals and associated funerary objects from Paak'u with the Pueblo of Santa Ana, New Mexico; Pueblo of San Felipe, New Mexico; and Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo). In August 2015, the AMNH submitted revised inventories for these human remains and funerary objects to the affiliated tribes and the National NAGPRA Program. On December 8, 2015, a Notice of Inventory Completion was published in the *Federal Register*.

Action Item: Deliberation on the Request by Pueblo of Santa Ana

Ms. O'Brien stated that, in accordance with the Review Committee's dispute procedures, the Review Committee may decide to: recommend actions to the parties to resolve the dispute or inform the finding of fact; make a finding of fact on questions presented; vote; seek consensus or otherwise provide guidance on the issue or questions submitted; take no action; decide to postpone action; or act in any combination of above on the issue or questions submitted.

Mr. Hughes, Pueblo of Santa Ana, clarified an incorrect date from their earlier presentation and cited the informational source as a statement to the House Subcommittee on Indian Affairs titled, *The History of San Felipe People* (specifically Abel Sanchez, who served as former governor of the Pueblo of San Felipe in 1968, not 1986). Mr. Lyons asked if perhaps the Abel Sanchez who was being referred to was the former six-time chair of the Pueblo of San Ildefonso. Mr. Hughes stated that was correct. Mr. Lyons stated that perhaps that was not an authoritative statement for this issue, given that the Pueblo of San Ildefonso (a Tewa people) is not linguistically or culturally related to the Pueblo of San Felipe (a Keres people).

The Review Committee asked extensive questions of both parties in order to clarify the information presented. Ms. Farm stated that one of the roles of the Review Committee was to try to facilitate a resolution. In response to her offer for additional off-the-record discussions between the parties at this meeting, both Pueblos declined, citing several reasons, and indicated that they were prepared for the Review Committee to make a recommendation. Mr. Minthorn stated that NAGPRA can only be successful when tribes can reach consensus. Mr. Minthorn asked for clarifications of portions of the presentations, which were provided. Mr. Minthorn stated that Indian people are the experts on their ancestors and sacred objects. In doing this work, one tribe cannot claim to be more traditional or knowledgeable over another tribe. Indian tribes need to work together in a humble way, and try to walk in each other's shoes. The intent of the Review Committee is to support what the tribes do under NAGPRA law. Mr. Titla shared the experience of his tribe in balancing tribal cultural practice and NAGPRA compliance practice, and stated that the Pueblo of San Felipe should not be penalized for following their practice of keeping specific information private. Mr. Titla asked several questions. In summary, representatives of the Pueblo of Santa Ana stated they followed the NAGPRA process for both the request to AMNH and for the earlier, 2013 reinterment, and showed that they are the most appropriate claimant. Representatives of the Pueblo of San Felipe stated that they were not included in the notification process for the 2013 reinterment, they wish to establish as fact their ties to the Paak'u site, and they wish to participate in the process of returning these ancestors and funerary objects to their final resting place. Despite some similarities, both pueblos acknowledged the cultural differences that exist between them, which have resulted in different traditional practices and ceremonies.

Review Committee Motion

The Review Committee thoroughly discussed the nuances of this request and the wording of the motion. Mr. Lyons made a motion that the Review Committee finds that both pueblos are culturally affiliated and recommend joint disposition. Mr. O'Rourke seconded, and stated that while he agreed that cultural affiliation of both groups was clear, a requirement for joint repatriation might delay the process given the earlier statements of the parties. Mr. Lyons proposed amending the motion to advise the tribes that determine which of them is to lead the repatriation. That motion was seconded by Mr. O'Rourke, but died following further discussion. Mr. Titla stated he felt, by a preponderance of the evidence, that the Pueblo of Santa Ana presented more convincing information, but that he was reluctant to penalize the Pueblo of San Felipe, who were constrained from fully sharing certain information due to cultural practice. Several Review Committee members stated they were uncomfortable making a choice as to which pueblo was the most appropriate claimant based on the information they had received. Ms. Edgar suggested the Review Committee recommend that the Pueblo of Santa Ana take the lead on reburial, because they have already begun the reburial process at this site. After discussion, Mr. Lyons amended his initial motion, and Mr. O'Rourke seconded.

The motion by Mr. Lyons, seconded by Mr. O'Rourke, and amended by agreement was as follows: "The Review Committee finds that cultural affiliation is as determined by the AMNH, and recommends that the Pueblo of Santa Ana take the lead in repatriation and reburial." Mr. O'Rourke called the question. The motion passed by a vote of five in favor (Edgar, Farm, Lyons, O'Rourke, Peters) and one against (Titla). Mr. Minthorn followed the practice of the chair only voting in the case of a tie. Mr. Minthorn encouraged the pueblos and all Indian tribes to work together in the vital effort of accomplishing repatriation of ancestral human remains and sacred objects.

Action Item: CUI Disposition Request – Lake County Discovery Museum

Presentation

Ms. Beth Nawara, NAGPRA Consultant; Ms. Diana Dretske, Collections Coordinator; and Mr. Andrew Osborne, Superintendent of Educational Facilities, Lake County Discovery Museum, appeared telephonically before the Review Committee. Ms. Nawara presented a request for the disposition of culturally unidentifiable human remains representing, at minimum, 13 Native American individuals (and associated funerary objects) currently under the control of the Lake County Discovery Museum in Illinois to the Sault Ste. Marie Tribe of Chippewa Indians, Michigan. Ms. Dretske gave a brief summary of the tribal notification process used by the museum for its collections since the 1990s. In February 2016, Ms. Nawara began a consultation process that ultimately resulted in a claim from the Sault Ste. Marie Tribe for the culturally unidentifiable human remains.

Review Committee Questions and Discussion

Mr. Minthorn expressed concern that the parties could not present in person. Ms. Farm asked clarifying questions. In response, Ms. Nawara confirmed that the Lake County Discovery Museum believes the human remains are Native American and have received signed letters of support, which will be submitted to the DFO.

Review Committee Motion

Mr. O'Rourke made a motion that the Review Committee recommend to the Secretary that the proposed disposition of the 13 human remains and associated funerary objects to the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, proceed under the agreement. Mr. Titla seconded the motion. Ms. Farm confirmed that this disposition would proceed pursuant to 43 CFR § 10.16. The motion was passed by unanimous vote.

Presentation: Office of the State Archaeologist, University of Iowa

Presentation

Ms. Lara Noldner, Bioarcheology Director, Office of the State Archaeologist, University of Iowa, presented a request for a recommendation from the Review Committee for approval of the renewal of the Process for Reburial of Culturally Unidentifiable Human Remains and Associated Funerary Objects Originating from Iowa, originally recommended for approval by the Review Committee in 2006. In 1976, the Iowa State Burial Law was enacted, protecting ancient human remains (anything over 150 years old), regardless of cultural affiliation. The process provided for the establishment of a State-owned cemetery where reburials of culturally affiliated and culturally unidentifiable human remains could occur. The process solidified the work of the State Archaeologist under the Iowa State Burial Law and NAGPRA.

The signatory tribes include (as listed on the agreement): the Sac & Fox Tribe of the Mississippi in Iowa, also known as the Meskwaki Nation; the Sac & Fox Nations of Oklahoma and of the Missouri in Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Iowa Tribe of Kansas and Nebraska; the Ho-Chunk Nation; the Winnebago Tribe; the Yankton Sioux; the Otoe-Missouria; the Three Affiliated Tribes Mandan, Hidatsa, and Arikara Nations; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Oklahoma; the Ponca Tribe of Nebraska; the Prairie Band Potawatomi Nation; the Citizen Potawatomi Nation; the Sisseton-Wahpeton Oyate; the Santee Sioux Tribe; the Flandreau Santee Sioux; the Lower Sioux Indian Community; and the Peoria Tribe of Oklahoma. One new signatory has been added, the Upper Sioux Community, Minnesota. This agreement was signed by the State Historical Society and the Office of State Archaeologist.

Ms. Noldner summarized the draft renewal agreement, a copy of which was provided to the Review Committee prior to the meeting and made available on the National NAGPRA Program website. The document outlines the

process followed for ancient human remains and artifacts under the Office of the State Archaeologist, including: documentation, determination of cultural affiliation or lack thereof, access to the human remains by the signatory tribes, reporting, tribal notification, the NAGPRA process, the process by which tribes may contest decisions, and reburial. Ms. Noldner stated that a review and renewal of the policy was underway, and she was requesting feedback from the Review Committee. Ms. Noldner stated that 15 tribes have submitted amendments or signatory pages, and final approval of the revised document would be contingent upon receiving a signed agreement from each listed signatory tribes.

Review Committee Questions and Discussion

Ms. Mattix stated that in 2006, the original agreement was considered and recommended for approval by the Review Committee, and was approved by the Department of the Interior as an appropriate process for the disposition of culturally unidentifiable Native American human remains. Many of the edits to the proposed renewal of the process were made in response to the 2010 regulations at 10.11, which deal with the disposition of culturally unidentifiable human remains from aboriginal land or tribal land. Ms. Noldner added that this agreement is particularly important in Iowa due to the large percentage of land in the state not covered by NAGPRA but covered under this state agreement. Mr. Minthorn stated that an annual tribal review of the agreement would be beneficial. Mr. Minthorn asked about the collections. Ms. Noldner stated that documentation of the collections was underway, and was supported by a NAGPRA grant. She hopes to submit a notice for culturally unidentifiable human remains in spring 2017. Ms. Farm asked if there has been any opposition to the renewal. Ms. Noldner stated that of the 15 responses to date, there was no opposition. Ms. Farm looked forward to reviewing the process document when all responses have been submitted. Mr. Titla commended the work of the Office of the State Archaeologist, expressed support for the process, and stated this is a good example for others on consultation and cooperative development of a process combining the requirements of state law with NAGPRA. Mr. Minthorn stressed the importance of frequent and ongoing consultation efforts. Mr. Titla suggested adding “sovereign” when referencing the signatory tribes throughout the document. Ms. Noldner hoped that this agreement could stand as an example for other states, and thanked the Review Committee for their time.

Presentation: The Osage Nation

Presentation

Ms. Andrea Hunter, Director and Tribal Historic Preservation Officer, The Osage Nation, appeared telephonically and stated that in November 2015, the Review Committee heard a request and made a finding of fact that the human remains of, at minimum, 29 Native American individuals and 2 associated funerary objects from the Clarksville Mound Group were culturally affiliated with The Osage Nation. Further, in an effort to facilitate positive progress, the Review Committee strongly recommended that the Missouri SHPO, pursuant to NAGPRA regulations, determine the most appropriate claimant for these human remains within the next six months, in consultation with the claimants, The Osage Nation and the Indian tribes belonging to the Sac & Fox NAGPRA Confederacy (Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa). If such a determination could not be made within six months, the Review Committee requested that the Missouri SHPO notify it of the barrier to doing so. Ms. Hunter reported that the DFO immediately conveyed this information to the Missouri SHPO. The Osage Nation sent a letter, dated June 20, 2016, requesting a final decision regarding the disposition of the ancestors from the Clarksville Mound Site. The only response received by The Osage Nation was dated at 6:12 am, July 14, 2016, in which the Missouri SHPO responded, “The request is under review and a formal response will be formulated and will be provided at a later date.” The six-month deadline for response is August 18, 2016. Ms. Hunter stated The Osage Nation hopes the Missouri SHPO will formally respond to this request.

Review Committee Motion

The Review Committee expressed disappointment at the lack of movement on this issue. Mr. Lyons made a motion that the DFO follow up on the Review Committee’s request with the Missouri SHPO following the six-month deadline if no response is received in the interim. Mr. O’Rourke seconded the motion. The motion passed by unanimous vote.

Presentation: National Park Service, Park NAGPRA

Ms. O'Brien stated that Ms. Mary Carroll, Chief, National Park Service, Park NAGPRA, was unable to attend the meeting due to a personal emergency and sends her deep regrets. Ms. O'Brien provided a written copy of Ms. Carroll's presentation to the Review Committee members for their review. Mr. Minthorn asked Ms. O'Brien to forward his concern regarding the statements on page 3 of the presentation noting that inadvertent discoveries and intentional excavations in parks can neither be predicted nor coordinated, and expressing the "hope that parks and regions become aware of new requirements"; this should not be a hope, but is truly a requirement. Mr. Titla expressed concern that the Park NAGPRA office did not have a representative at the meeting. Mr. Minthorn asked for clarification of the statement that Park NAGPRA can take the burden of reporting away from individual parks. Ms. O'Brien stated that Federal agencies are required to report on collections to the National NAGPRA Program; Park NAGPRA intends to fulfill this requirement on behalf of all parks and regions. Mr. Minthorn expressed concern that this could possibly result in a slower process, with increased chance of miscommunications. Ms. O'Brien agreed to share these concerns. The Review Committee members agreed to review the statement. No additional questions or comments were brought to the attention of the full committee before the close of the meeting.

Presentation: Bureau of Land Management

Presentation

Ms. Emily Palus, Deputy Division Chief, Bureau of Land Management's Division of Cultural, Paleontological Resources and Tribal Consultation, and Mr. Buck Damone, Lead Archaeologist, Buffalo Field Office, presented an update on BLM NAGPRA implementation. Ms. Kathy Boden, Historic Preservation Specialist/SHPO Liaison, Wyoming State Office, was unable to attend due to a personal emergency, and sends her deep regrets. Ms. Palus provided a brief history of the BLM and its NAGPRA implementation. BLM was created in 1946 with the merging of the General Land Office (GLO) and the U.S. Grazing Service. The BLM is mandated by the Federal Land Policy and Management Act of 1976 (FLPMA) to manage resources on these lands for a variety of uses — such as energy development, livestock grazing, recreation and timber harvesting — while protecting a wide array of natural and cultural resources. The BLM manages 245 million acres of land, most of which is located in 12 western states and Alaska, and 700 million acres of subsurface mineral estate throughout the nation. BLM is a tiered organization with 12 state offices, under which there are 46 districts and 133 field offices. Implementation of NAGPRA is assigned to the Cultural Resources Program, which includes management of cultural and paleontological resources on the public lands, as well as the associated museum collections data, coordination of the BLM's tribal relations efforts, and conformance with Section 106 of the National Historic Preservation Act (NHPA).

BLM's completed NAGPRA inventories document 2,069 sets of Native American human remains and 19,895 associated funerary objects, held in 5 BLM facilities and 42 nonfederal repositories in 17 states. Seventy-seven percent of the Native American human remains have been culturally affiliated and published in 69 Notices of Inventory Completion. Of those, 75 percent have been requested and repatriated. Those that are culturally affiliated but not yet requested continue to be held in curation facilities and are available for repatriation upon a request. The BLM has inventoried 485 sets of human remains determined to be culturally unidentifiable, 12 of which have been either subsequently affiliated to a present day tribe or offered for transfer and published in notices, and 10 were reburied on BLM public land in 2012. The BLM is reviewing its culturally unidentifiable inventories to see whether any of the human remains in these inventories can be affiliated.

Ms. Palus stated that in 1998, BLM-issued policy prohibited the reburial of Native American human remains and cultural items on its public lands. This policy position was due to the fluid nature of multiple use parcels and the BLM's concern about future protection of reburied human remains and funerary objects and the potential for disturbance due to land use activities. Subsequently, the BLM leadership heard from Indian tribes and BLM managers and staff in the field that this prohibition on reburial was a barrier to repatriation. In 2006, the BLM leadership issued instructional memorandum 2006 002 allowing reburial to occur on a case-by-case basis. Under that policy, reburial should be as close to the original location as possible. (This is not always possible due to subsequent/planned development or high risk of natural or unauthorized human disturbance.) When considering reburial, BLM evaluates land selection and status, NEPA and NHPA requirements, tribal access, legal and physical protections, budget concerns, and future management needs. The BLM policy requires BLM to transfer control of any Native American human remains prior to their reburial on BLM lands. The BLM plans to codify this policy in its manuals, handbooks, and tribal consultation policy and guidance. The revised policy benefits from 10 years' of

experience, and should offer increased state-level discretion and flexibility in the review and approval process, provide guidance on land selection for reburial locations, and outline agency responsibilities.

During the past 10 years, the BLM has received 17 formal requests for the reburial on BLM lands of over 100 ancestors. All 17 requests have been approved, 16 reburials have been successfully concluded, and 1 reburial is scheduled for fall 2016. The reburial locations are in Colorado, New Mexico, Oregon, Washington, Utah and Wyoming. Additional reburial projects and requests are in process. Thus far, BLM managers have been very supportive of facilitating requests; appropriate reburial locations have been determined; and most reburials have been small. BLM has funded most of the reburial costs, and has provided equipment, logistics, coordination, access for Elders, and monitoring. Most reburials have consisted of human remains in BLM collections; however, reburials of human remains in non-BLM collections were also approved and facilitated when there was a connection between the human remains and BLM managed public lands. As an example, Ms. Palus described the reburial of human remains and associated funerary objects that had been removed from GLO lands in the late 1800s and were under the control of the National Museum of the American Indian (NMAI).

Mr. Buck Damone read Ms. Kathy Boden's statement to the Review Committee. Ms. Boden described NAGPRA compliance, history, and current efforts within the BLM Wyoming State Office. Throughout the 1990s, BLM Wyoming worked with six repositories in Wyoming, Colorado, and Utah to produce its inventories. BLM Wyoming originally consulted with six Indian tribes, but has expanded its consultation efforts to 22 Indian tribes. Since 1993, three repatriations and reburials have been completed in Wyoming. Ms. Boden is working to ensure records accuracy for BLM Wyoming, including identification of nonfederal repositories with BLM Wyoming collections. Records currently indicate approximately 50 NAGPRA cultural items in BLM Wyoming collections. Ms. Boden cited nonfederal repositories loaning or moving BLM Wyoming NAGPRA cultural items without BLM knowledge, limited access to collections, and poor storage and recordkeeping systems as barriers to NAGPRA implementation experienced by BLM Wyoming.

BLM Wyoming is currently working on three reburials, two dispositions of inadvertent discoveries, and a repatriation and reburial of three associated funerary items. BLM Wyoming continues to keep pace with inadvertent discoveries; all plans of action include NAGPRA compliance stipulations. BLM Wyoming plans to hold a meeting with all 22 Indian tribes to review past actions and future NAGPRA implementation plans. Moving forward, BLM Wyoming would like to develop a strategic plan similar to the Colorado MOU model. Ms. Boden emphasized that BLM Wyoming intends to repatriate and rebury all NAGPRA items from BLM lands. BLM Wyoming hopes to work with the Indian tribes to develop a better process and expedite dispositions, perhaps through the consolidation of BLM Wyoming collections at one repository.

Mr. Buck Damone described a repatriation and reburial effort at the BLM Buffalo Field Office. Mr. Damone provided a brief history of the Dull Knife Battle, fought on November 25, 1876, in a Northern Cheyenne camp on the Red Fork of the Powder River in Wyoming. An estimated 40 Northern Cheyenne died as a result of the battle or the subsequent retreat. At some time during the retreat, a Northern Cheyenne woman was buried in a crevasse in a cliff two miles from the camp. The burial was known and documented in local history. Due to concerns of site disturbance by a nearby proposed range improvement project, BLM investigated the burial to record its condition, determine if it had been looted, and determine if it was eligible for listing in the National Register of Historic Places. Prior to excavation, BLM contacted the Northern Cheyenne historian who indicated the burial should not be disturbed, a sentiment shared by the local landowners. In 1987 (prior to NAGPRA), BLM visited this site with forensic archeologists who dismantled the stone wall and removed the contents of the burial for documentation. The investigation of the human remains concluded that the burial contained the bones of one adult female and several small fragments of textiles, leather, and rawhide. After field examination of the human remains, they were placed back into the crevasse and the stone wall was rebuilt. The associated funerary items were collected and stored at the Buffalo Field Office. Analysis confirmed the textiles were of appropriate age to be associated with the Dull Knife Battle.

In 2007, the Buffalo Field Office consulted on the associated funerary objects from the crevasse burial with the Northern Cheyenne THPO and NAGPRA representatives, who wished to reinter the funerary objects at the burial location. In September 2008, after publishing a *Federal Register* notice and repatriating the associated funerary objects to the Northern Cheyenne Tribe, the Buffalo Field Office was the first BLM office to take advantage of the new reburial policy. The funerary objects were reinterred at the original burial site, with four Northern Cheyenne Elders and two THPO representatives present to observe and perform the necessary ceremonies. The emotional and

solemn event was especially significant in that it was most likely the first time since November 1876 that any individuals from the Northern Cheyenne Tribe visited the location. As a direct result of the new policy and this reburial, relations between the Buffalo Field Office and the Northern Cheyenne improved; a dialogue was started regarding the treatment of the Dull Knife Battle site and the Northern Cheyenne escape route; and the Buffalo Field Office committed to preventing the recurrence of the kinds of activities as occurred with the crevasse burial.

Review Committee Questions and Discussion

The Review Committee commended the BLM on the success of their reburial policy and asked several clarifying questions. In response, Ms. Palus stated that the revised policy will be codified into a BLM manual. Mr. Minthorn stated that a BLM representative had indicated to him that she did not know if reburials could occur on BLM land, and she was asked for an update on BLM action in response to the 2010 GAO report. Ms. Palus stated she has consistently updated the Review Committee on BLM NAGPRA implementation since 2012. Ms. Palus stated that the BLM has worked to inform the field offices of the reburial policy; guidance would be included in the revised policy to clearly outline the process; and the issue of reburial was included in the tribal relations manual. In response to the GAO report, the BLM drafted a needs assessment, which was provided to the Review Committee prior to the meeting and is available on the National NAGPRA Program website. Ms. Palus identified barriers to NAGPRA implementation that include BLM collections in nonfederal repositories (described earlier), stressed resources, and unfilled staff positions. The BLM has increased NAGPRA training efforts, through one-day workshops and during tribal relations training. Ms. Palus apologized for any misunderstanding communicated on behalf of herself or other representatives from the BLM. Mr. Lyons asked about BLM staff dedicated to NAGPRA implementation. Ms. Palus stated that the BLM has 140 archeologists and 4 curators. Ms. Palus stated that the BLM continues to work as effectively as possible with available resources, and is dedicated to its NAGPRA implementation work. Mr. Minthorn commended the BLM on their success with their reburial policy, stressed the importance of continued consultation, and asked for continued updates to the Review Committee.

Presentation: Bureau of Indian Affairs

Presentation

Ms. Annie Pardo, Museum Program Manager and NAGPRA Coordinator, Division of Environmental and Cultural Resources Management, Bureau of Indian Affairs (BIA), presented an update on the BIA's NAGPRA implementation. Ms. Pardo explained why Federal collections are in so many nonfederal repositories. Beginning on June 8, 1906, with the passage of the Antiquities Act, the Secretaries of the Smithsonian Institution and the Department of the Interior approved requests for archeological excavations that were submitted by universities, museums, and other institutions. The first permits were very short, with conditional clauses added through time. In December 1954, Antiquities Act regulations were promulgated, which required that collections be permanently preserved in the public museum designated in the permit, that the collections be accessible to the public, and that these collections not be removed from the museum without the written authority of the Secretary of Smithsonian Institution. There are 124 boxes of permits at the National Archives in College Park, Maryland, and 153 boxes of permits at the Smithsonian's National Anthropological Archives in Suitland, Maryland, with each box containing an estimated 60 to 80 permits.

Ms. Pardo and other BIA staff are working to identify BIA collections in repositories. Identification of a repository on paper does not guarantee that the collections will be at that location. Collections may have been moved with no documentation, archeologists may have exchanged objects, collections from a site may have been split and sent to multiple repositories, and some collections may have been loaned to museums and universities outside the United States illegally. Ms. Pardo used the term "illegal loans" because the United States Government, which is the owner of these collections, did not approve these loans, and was (and still may be) unaware that the loans or transfers were made. In addition, Antiquities Act permits do not account for collections that came from unpermitted activities that took place on lands owned or controlled by the United States, and which contain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

The BIA asserts control over archeological items, including items subject to NAGPRA, which either were removed from Indian trust or restricted lands under the authority of the Antiquities Act between June 8, 1906 and October 31, 1979, when the Archaeological Resources Protection Act (ARPA) was passed, or were removed without authority. BIA has collections in more than 160 repositories, including Federal and nonfederal repositories, university departments, museums, historical societies, and tribal museums. At this time, the BIA is aware that NAGPRA

cultural items under BIA control are located at 34 different repositories. Of these repositories, eight continue to house NAGPRA cultural items that have been published in notices, but await action by the affiliated tribes to receive them. Ms. Pardo periodically contacts those affiliated tribes to see if they are ready to receive them. Of the 26 other repositories, some are currently working under contract to assess the BIA collections. When human remains and funerary objects are identified, the BIA sends letters to potentially affiliated tribes advising them of the findings, and inviting the tribes to consult. The BIA promptly responds to tribal requests for information or consultation, and provides updated inventory information to the National NAGPRA Program. Ms. Pardo stated the BIA has ongoing contracts with several repositories, including the Museum of Northern Arizona, the Autry Museum of the American West, Fowler Museum at UCLA, the University of Colorado Museum of Natural History, the Nebraska State Historical Society, Museum of Indian Arts and Culture, and the Arizona State Museum. Additional contracts were recently awarded to the New Mexico State University Museum, the Museum of the Great Plains, and the University of Kansas Museum of Natural History.

Regarding as-yet unidentified BIA collections in nonfederal repositories, Ms. Pardo referenced the written comments submitted by Dr. Terry Childs, at the Department of the Interior, regarding the information collection request and the forthcoming Department of the Interior survey (provided to the Review Committee prior to the meeting and available on the National NAGPRA Program website). The Department's bureaus are permitted to request information from repositories for the purposes of identifying and locating Federal collections. However, the response from survey recipients is strictly voluntary, and there is nothing in the law to compel repositories to respond. The BIA is hopeful that the COE (managing the survey) is successful in gathering information. Ms. Pardo stated it would be very helpful and appreciated if the Review Committee could stress to museums the importance of responding to this survey as thoroughly and completely as possible. Ms. Pardo noted a troubling trend by museums when it comes to publishing joint notices, and described BIA's recent experience with a museum that refused to publish a joint notice.

Another challenge for the BIA is dealing with NAGPRA issues involving Alaska Native Villages and tribes. Many of them struggle with the NAGPRA compliance process due to lack of infrastructure, resources, and staff. Ms. Pardo referenced a memorandum submitted by the Alaska Federation of Natives (provided to the Review Committee prior to the meeting and available on the National NAGPRA Program website) with further details on this issue. Ms. Pardo stated that Review Committee attention to this matter would be greatly appreciated.

Ms. Pardo described the effort of the BIA to address the illegal trafficking of NAGPRA items. Work has progressed on seven cases in the Southwest, with plans to expand investigations into other regions, including Alaska. Ms. Pardo stated that she would share further information as cases are completed. BIA investigators have fostered relationships of trust and cooperation with affected tribal leadership and other law enforcement agencies, resulting in critical input. Ms. Pardo stated she would continue to advocate for the BIA to provide training on ARPA and NAGPRA enforcement. The House Appropriations Committee submitted a report to accompany the 2017 appropriations bill for the Department of the Interior, in which the committee recommends one million dollars to support the development of a cultural items unit within the BIA's Office of Justice Services, to be tasked with investigating NAGPRA and other cultural resources violations.

Ms. Pardo stated that the BIA continues to make progress on many fronts, and is building and solidifying relationships with staff at museums, tribes, and law enforcement (both tribal and Federal). Ongoing contracts with repositories are enabling the BIA to identify human remains and NAGPRA cultural items, and are leading to consultations, drafting and publishing notices, and repatriating ancestors, funerary objects, sacred objects, and objects of cultural patrimony. Ms. Pardo thanked the Review Committee for the opportunity to make this presentation.

Review Committee Questions and Discussion

Mr. Lyons thanked the BIA for their excellent partnership on repatriation and reburial projects. Ms. Edgar thanked Ms. Pardo for her presentation, and asked why a museum would refuse to publish a joint notice. Ms. Pardo stated that dealings with the repository in question have been particularly difficult, and although she did not know the exact reason for the refusal, the notice was eventually published and the human remains and cultural objects recently returned. Mr. Minthorn stated that the BIA report was informative, and asked that the BIA continue to update the Review Committee on its NAGPRA implementation activities. Mr. Minthorn cited the 2010 GAO report, and asked for an update of BIA's actions in response. Ms. Pardo stated that the BIA submitted a needs assessment, similar to that described by Ms. Palus and available on the National NAGPRA Program website; the BIA continues to make

progress on consultation, notice publication, and repatriation. Mr. Minthorn asked Ms. Pardo to reiterate the BIA's two requests of the Review Committee. Ms. Pardo stated that the first request was to help Alaskan Native villages and the second request was to encourage museums to complete the DOI collection survey. Mr. Minthorn stressed the importance of ongoing consultation and regular meetings with Indian tribes. Ms. Peters stated, as an Alaska Native, she agreed with, and appreciated, Ms. Pardo's statements regarding the challenges faced by Alaska Native Villages and tribes.

Written Comments

Ms. O'Brien stated that the Review Committee received two written comments, both of which were provided to the Review Committee prior to the meeting and available on the National NAGPRA Program website. The first was from the Department of the Interior Museum Program (referenced by Ms. Pardo), and the second was from Texas State University. Ms. O'Brien stated that the Review Committee was welcome to review these statements and take action during the course of the meeting.

Public Comment – July 14, 2016

Mr. Shane Anton/Ms. Angela Garcia-Lewis

Mr. Shane Anton, Cultural Preservation Program Manager, and Angela Garcia-Lewis, Cultural Preservation Compliance Supervisor, Salt River Pima-Maricopa Indian Community, presented comments on behalf of the Four Southern Tribes of Arizona. Mr. Anton introduced members of the Four Southern Tribes present at the meeting: Ms. Reylynne Williams, Cultural Resource Specialist, Gila River Indian Community; Ms. Caroline Antone, Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Mr. Larry Benallie, Archeological Compliance Specialist, Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Ms. Martha Martinez, NAGPRA Coordinator, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

The Salt River Pima-Maricopa Indian Community (SRPMIC) is a federally recognized tribe with standing under NAGPRA as defined in 43 C.F.R. 10.2(b)(4). The SRPMIC Culture Preservation Program is responsible for all NAGPRA implementation on behalf of the community. The SRPMIC conducts consultation in consensus with the Four Southern Tribes of Arizona, which consist of the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, and the Tohono O'odham Nation of Arizona. The Four Southern Tribes of Arizona have a relationship of shared group identity that can be traced historically and prehistorically between the Four Southern Tribes of Arizona and the people that inhabited southern Arizona and the northern region of present day Mexico from time immemorial.

The SRPMIC and the Four Southern Tribes of Arizona have strong beliefs about their obligations to their ancestors, as well as deep and binding ties to one another, all of which are vital to the health and continued existence of the communities. People are more than physical beings, and do not cease to exist spiritually or to have ties to this earth at the time of death. Rather, they go on in a new form of existence, but only if the physical remains from this world are allowed to continue in the natural progression, undisturbed, until they return to the earth when their entire body breaks down and is undistinguishable from the dust. The SRPMIC acknowledges the great importance of NAGPRA to this progression. The SRPMIC understands and respects that many Indian tribes believe that an individual whose burial has been disturbed should be reburied as closely as possible to the original burial site or even left *in situ*.

The SRPMIC and the Four Southern Tribes of Arizona do not rebury *in situ*, within archeological sites or on non-community land for several reasons: it would violate traditional religious beliefs to protect and honor the ancestors; when the final resting place is impacted in any way, a new home must be constructed; and Federal agencies cannot guarantee protection for burials in perpetuity, Federal mandates may conflict with cultural mandates, Federal lands are not secure and may change ownership or status, and there is no guarantee of the protection of institutional knowledge within Federal agencies. Following cultural protocol, the SRPMIC and the Four Southern Tribes of Arizona always repatriate back to the community.

Ms. Garcia-Lewis stated that the SRPMIC and the Four Southern Tribes of Arizona will not repatriate any human remains or funerary objects under the culturally unidentifiable regulations in cases where provenience, context, and known identification of funerary objects can establish that they are from a specific archeological material culture, such as the Hohokam, Salado, Sinagua, and Patayan, for several reasons: first, it would violate traditional beliefs by creating tacit agreement that the human remains cannot be identified, and also could result in the disposition of the human remains without their associated funerary objects; and second, it would create a negative and incorrect legal precedent that the tribes cannot demonstrate a cultural relationship with the archeological material culture, which could be detrimental to future repatriation.

The SRPMIC and the Four Southern Tribes of Arizona assert that NAGPRA must develop and support guidelines that allow for adequate and consistent consideration of nonscientific cultural affiliation evidence, such as societal and personal relationships. To move forward under the CUI rule would indirectly support the expectation that Indian tribes must satisfy a stricter standard of evidence than is required by NAGPRA, such as clear and convincing evidence or evidence beyond a reasonable doubt. The absence of guidance for tribes and for procedural uniformity requirements for institutions creates inconsistencies in repatriation for Indian tribes. Finally, the inability to establish cultural affiliation to human remains and funerary objects currently categorized as culturally unidentifiable (CUI) leaves them unprotected from research and testing without adequate prior consultation on respectful treatment.

The SRPMIC and the Four Southern Tribes of Arizona recommend that:

- The Review Committee explore ways to identify how previous precedent should affect current and future NAGPRA cases, for example, what weight does a previous cultural affiliation have in current consultation.
- The National NAGPRA Program and the Review Committee emphasize the fact that NAGPRA's legal standard is satisfied if it's more likely than not that the tribe in question is related to the earlier identified cultural group by developing training specifically about determining cultural affiliation that emphasizes that point.
- Guidelines be developed, with examples of specific cases, that represent the type and depth of information necessary to establish cultural affiliation, in order to streamline the process, which includes a meaningful and equally weighted consideration of oral history and traditional information.
- A process be developed to ensure that tribes, museums, and institutions are transparent and fair in decisions; require disclosure of, and consultation with, whomever makes the final determination in these decisions; ensure that experts are mutually agreed upon by the institution and tribes; include tribes in the decision making process to evaluate the information; and that the information being evaluated meets the current standards for academic scholarship on the discipline in review, so as not to use outdated or disavowed information.
- Research on human remains cease when a claim has been submitted and the requestor is awaiting a decision. The SRPMIC and the Four Southern Tribes of Arizona are opposed to particular types of research on human remains and funerary objects, and are interested in consulting on research requests for remains that are culturally affiliated with their communities.

Ms. Garcia-Lewis stated that burial sites are among the most sacred of all types of traditional cultural places, and the people of prehistoric times are community members. Burial disturbance of any type is a grievous injury to the deceased, as well as to the living communities, especially for these human remains that have in some cases been in repositories for almost a century. The burials of ancestors are as important to the SRPMIC and the Four Southern Tribes of Arizona as the burials of family members today.

Mr. Minthorn thanked the SRPMIC and the Four Southern Tribes of Arizona for their comments.

Request: Wiyot Tribe, California

Ms. O'Brien stated that the Wiyot Tribe has requested that the Review Committee make a finding of fact and facilitate the resolution of a dispute from the Review Committee pursuant to the Review Committee's responsibilities under NAGPRA at 25 U.S.C. 3006 (c)(3) and (4). The Review Committee's finding of fact and facilitation of dispute resolution does not take place in the setting of a formal hearing or adjudication. The Review Committee's role is to facilitate the informal resolution of disputes to help the parties informally negotiate a fair resolution of the matter. Any recommendation, finding, or other action of the Review Committee is advisory only and not binding on any party. The request from the Wiyot Tribe, detailed in the meeting materials, concerns the

identity of certain cultural items under the control of the Phoebe Hearst Museum of Anthropology (Hearst Museum). The Wiyot Tribe requested repatriation of these cultural items under the criteria at 43 CFR 10.10 (a). The Hearst Museum determined that the cultural items in question do not meet the criteria for repatriation. The Wiyot Tribe disputes the Hearst Museum's determination that the cultural items do not meet the definition of either objects of cultural patrimony or sacred objects. The Wiyot Tribe requests that the Review Committee review the record, make a finding of fact on the identity of the cultural items, and make a recommendation to the parties on resolving the matter. A copy of the documentation was provided to the Review Committee members prior to the meeting and made available on the National NAGPRA Program website.

Presentation: Wiyot Tribe, California

Ms. Cheryl Seidner opened the presentation with an invocation. Mr. Thomas Torma, Cultural Director and THPO, Wiyot Tribe, California, presented the request on behalf of the Wiyot Tribe, California. In 2014, the Wiyot Tribe submitted a request for the repatriation of certain cultural items identified as shamanic ("sucking doctor") regalia, under the control of the Phoebe Hearst Museum of Anthropology. Following the Hearst Museum's determination that the cultural items in question do not meet the criteria for repatriation, the Wiyot Tribe completed all options for mediation through the University of California Office of the President (UCOP). Mr. Torma described the cultural items. Item numbers 9416-9420 consist of a feather headdress, two pipes and scabbards or cases, a belt, and a fawn skin casing, collected by Alfred Kroeber, Professor of Anthropology, UC Berkeley, in 1906 from Julia Gates. Item numbers 11618-11622 consist of condor feather hair ties, two condor feathers, a belt, and a pipe and case collected by Mr. Cornelius Rumsey at an unknown time and donated to the Hearst Museum in 1907. Item numbers 27068-27073 consist of a bluebird and yellow hammer headdress, condor feathers, a pipe and scabbard, belt, and deerskin transferred in 1929 by an intermediary from Winnie Buckley (known to the Wiyot Tribe as a sucking doctor) to the Hearst Museum when she needed medicine. The Wiyot Tribe is claiming these sets as objects of cultural patrimony and sacred objects.

Mr. Torma stated that both Julia Gates and Winnie Buckley were members of the Wiyot Tribe and specifically the community based around Table Bluff. The items are sacred objects; their use for healing and healing ceremonies by shamans is well documented in both oral tradition and published sources. Mr. Torma described the objects' traditional use. Mr. Torma stated that the World Renewal Ceremony of 1860 on Indian Island was interrupted during the sixth night of the seven-to-ten day ceremony by the Massacre of Indian Island. This essential ceremony was one part of a complex ritual performed with other tribes called the World Renewal Process. Each tribe had a role, and the Wiyot Tribe was responsible for beginning the ceremony. The sucking doctors, and their regalia, were important due to their role in commencing the ceremony for the Wiyot Tribe and, thus, the entire World Renewal Process. The 1860 ceremony did not end because it was not properly closed. The ceremony had to be completed on Indian Island, which was not accessible to the Wiyot Tribe until the tribe purchased the 1.5 acre Tuluwat Shell Mound Site in 2000. The Tuluwat Shell Mound Site was a contaminated site that took 13 years to rehabilitate. Once cleared, the ceremony was planned and completed in March of 2014. Ms. Mari Lyn Salvador, the Hearst Museum director, brought the feathered headdress to the ceremony, but did not allow it to be used, citing its fragility. The headdress was kept with the women's medicine items and then put on protected display to be visited. It was important that the headdress be present to perform part of the medicine, and its most significant role was during the opening part of the ceremony, done in 1860. Mr. Torma noted that the Hearst Museum relied on details of Yurok ceremonies for a large part of their analysis, which were irrelevant and inappropriate given the cultural differences between the Yurok and the Wiyot.

Mr. Torma stated that the objects were not owned by anybody in the tribe, but were cared for by the sucking doctor who used them and later passed them along to another doctor. Oral evidence shows that if there was no other doctor, the doctor's family would hold them until they could go to another medicine woman. At best, the items were sold under duress. Kroeber's journals note, "She will not sell," referencing Julia Gates. The Hearst Museum records note that Winnie Buckley sold the items because she was ill and in need of money. Oral evidence shows that Winnie Buckley saw the transaction, a common and culturally appropriate practice, as a loan and not a permanent sale. Mr. Torma pointed out that the Hearst Museum uses absence of evidence to show evidence of absence, i.e., that the lack of evidence showing that Winnie Buckley tried to retrieve the items shows that the transaction was not a loan, and the lack of evidence that Kroeber considered Winnie Buckley a sucking doctor shows that the regalia is not a sacred object. Mr. Torma explained that the materials submitted by the Wiyot Tribe provide ample oral traditional evidence in support of the items' classification as sacred objects and objects of cultural patrimony that are inseparable from the tribe and necessary for ongoing practice of traditional religious ceremonies. Winnie Buckley and Julia Gates, and their regalia, were of central importance to the tribe. Mr. Torma

urged the Review Committee to find that the items are cultural items under NAGPRA eligible for return to the Wiyot Tribe.

Ms. Cheryl Seidner, Wiyot Tribe, California, stated she grew up under the shadow of the Massacre of Indian Island, and that the story of the Massacre forms part of her earliest childhood memories. Ms. Seidner stated that both of her grandmothers were medicine women, and she grew up with this knowledge and their example. Ms. Seidner described that her earliest desire was to go to the sacred Indian Island. She has no words to describe the first time she set foot on the island; songs came to her, and she felt she was home. Her journey was chosen for her, to try to bring things home and learn about her people and herself. Ms. Seidner described the process of purchasing and rehabilitating the island from contamination, and ultimately closing the ceremony in 2014 that began in 1860. Ms. Seidner described the reaction of the tribe in seeing the headdress and emphasized its importance in finishing the ceremony. The World Renewal Ceremony is very important, not just for the tribe but for the entire world.

Presentation: Phoebe A. Hearst Museum of Anthropology

Mr. Jordan Jacobs, Head of Cultural Policy and Repatriation for the Phoebe Hearst Museum of Anthropology, appeared telephonically and stated that the Hearst Museum is proud of its record of NAGPRA compliance and strong collaborative relationships with tribes, and is among the nation's most active institutions in NAGPRA work. The museum processes multiple NAGPRA claims at a time, with an emphasis on consultation, evidence research, and transparency.

To clarify the record, Mr. Jacobs described an earlier claim by the Wiyot Tribe, submitted by Helene Rouvier, on November 11, 2007. Active consultation on that previous claim ceased in early 2008. On March 7, 2008, the museum informed Rouvier that the tribes' request lacked any information to overcome the Hearst Museum's finding, based on the preponderance of the evidence, that the museum had the right of possession to the objects and the items in question do not fit any of NAGPRA's definitions of "cultural item." Rouvier responded on March 19, 2008, that she was quote, "not completely surprised," unquote, by the findings since she too, quote, "was unable to find either a 'present day adherent' or evidence that the right of possession of the regalia was to the group rather than to an [sic] individual," unquote. She then went on to say, quote, "it appears that the items were legally obtained," unquote.

The current claim originated with an April 11, 2014 letter from Dr. Torma. Regular consultation has continued since that time, with new information presented by the tribe as recently as April 13, 2016. The determination to deny this claim was made first at the campus level by the Hearst Museum's director, in agreement with the findings of UC Berkeley's NAGPRA repatriation committee. Upon the Wiyot Tribe's appeal, the campus's determination was upheld by the University of California Office of the President (UCOP), per UCOP's June 6, 2016 decision letter. The Hearst Museum was dismayed that the Wiyot Tribe's request to the Review Committee was filed while the matter was still pending review under the UCOP NAGPRA appeals process, and considered the timing of the request a mark on what the Hearst Museum has otherwise considered to be a good-faith consultation process with the Wiyot Tribe.

In evaluating this claim, the Hearst Museum used NAGPRA's structured approach, a preliminary determination of right of possession and then subsequent decisions on cultural affiliation and fit within NAGPRA's defined object categories. Mr. Jacobs stated that, under NAGPRA, if a museum satisfies its burden to prove right of possession all further considerations are moot; however, the Hearst Museum examined this claim based on all three requirements. NAGPRA requires consideration of the right of possession, cultural affiliation, and categorical definition at the time of collection in 1906, 1907, and 1929. The Hearst Museum does not think that the recent, nonspecific information regarding inalienability of shamanic material overturns a preponderance of the evidence weighing against it, including the contradictory 2008 statement of a tribal official regarding right of possession in this case. In addition, the Hearst Museum does not believe that the collection of this material was made under duress. Duress has a specific legal meaning and is not applicable simply where an economic disparity may exist between a buyer and a seller. NAGPRA's language is careful to explain that the law cannot be used to compel a violation of the Fifth Amendment's takings clause, which the repatriation of this material would represent. Mr. Jacobs stated that while Wiyot cultural affiliation is clear, based on an overwhelming preponderance of the evidence, this specific material cannot be construed as having been needed or devoted to a traditional Native American religious ceremony even before 1860 or at the time that the objects left the possession of tribal members, and therefore they are not sacred objects under NAGPRA. Mr. Jacobs stated that the evidence supporting the Hearst Museum's determinations is presented clearly in the binder material.

Mr. Jacobs stated that the Hearst Museum's participation in the hearing was informed by its observation of previous Review Committee proceedings. The Review Committee is a Federal Advisory Committee subject to the Federal Advisory Committee Act (FACA), which requires that committee membership be, quote, "fairly balanced in terms of points of view represented," unquote. It has been the Hearst Museum's long-held opinion, gained during frequent observation of Review Committee proceedings, that the Review Committee does not meet that standard. Mr. Jacobs referenced the 2010 GAO report, wherein the GAO reported that an entrenched structural bias against museum interests within the Review Committee and its management had been alleged, which could impact the Review Committee's ability to carry out its responsibilities. Following the GAO report's publication, disputes before the Review Committee have been notable for procedural disparities and errors. Examples of this include: unequal time allotted to museum and tribal disputants; testimony of the Review Committee chairperson from the witness table on behalf of a disputant tribe; an undisclosed ethics investigation related to Review Committee members' receipt of federally protected eagle feathers as gifts from a disputant tribe; and admonishments inflicted on museum disputants by Review Committee members, often on matters immaterial to the law.

At the November 2015 meeting, the Review Committee noted the absence of an interested party as a preponderance of the evidence in favor of the attending party; demonstrated a gross misunderstanding of the finding of fact process and NAGPRA as a whole; and the Chair called for museums found to be out of compliance to "stay on the committee's radar" and be invited to provide updates. Mr. Jacobs stated that the Review Committee has no oversight role when it comes to violations of NAGPRA, and the intent to publically shame institutions whose transgressions or perceived transgressions have since been resolved is harmful. Mr. Jacobs claimed a FACA violation had occurred when, following a motion, the Chair called for a break for the Review Committee to seek clarification from counsel. All of these procedural errors occurred without comment or correction by members of the Review Committee, the DFO, or the National NAGPRA Program staff.

Mr. Jacobs cited the Pueblo of Santa Ana's minutes from a February 11, 2016 conference call with the DFO, where the tribe noted that Ms. O'Brien, quote, "indicated that the committee was reticent to take a position on a dispute between tribes," unquote, at which point the tribe, quote, "reassured her that their dispute was on the finding of fact with," unquote, the museum. In Mr. Jacob's view, the Review Committee should not have a preference on what sort of matters it considers or who the parties involved may be. Demonstration of such preference indicates the Review Committee's predisposition to take on matters that serve an unfair bias, where they can find for a tribe and against a holding institution. The Hearst Museum's concerns have carried over into the consideration of this case specifically. The Review Committee agreed to hear this matter knowing the Wiyot Tribe's claim was still pending within the UC system. The Wiyot Tribe had made it clear in its March 3rd, 2016 submissions to the DFO that not all other options towards resolution had been exhausted. The Hearst Museum believes this suggests a desire on the part of the Review Committee to malign the Hearst Museum, rather than to facilitate resolution. Given these unaddressed structural biases, the Hearst Museum expressed concern that the hearing would not help facilitate the resolution of this matter as the law intends. In light of all these concerns, Mr. Jacobs concluded both his statement and the Hearst Museum's involvement in this hearing, adding that the Hearst Museum looks forward to reviewing the transcript of the discussions when it becomes available so it can weigh any new evidence presented by the tribe.

Review Committee Questions and Discussion

The Review Committee members expressed disappointment at what they characterized as the disrespectful tone and timing of the remarks by Mr. Jacobs. Mr. Minthorn stated that it was important that the intent and purposes of the Review Committee and the NAGPRA law not be overshadowed by the opinions expressed by Mr. Jacobs. Repeated attempts to ascertain if Mr. Jacobs was still present on the teleconference line went unanswered. Following discussion, and out of respect for the Wiyot Tribe, California, the Review Committee continued its discussion despite the lack of participation by the Phoebe Hearst Museum.

Ms. O'Brien stated that, in accordance with the Review Committee's dispute procedures, the Review Committee may decide to: recommend actions to the parties to resolve the dispute or inform the finding of fact; make a finding of fact on questions presented; vote; seek consensus or otherwise provide guidance on the issue or questions submitted; take no action; decide to postpone action; or act in any combination of above on the issue or questions submitted.

At the Review Committee's request, Ms. Mattix provided the definition of "sacred object" and "cultural patrimony."

- Sacred object means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.
- Objects of cultural patrimony means items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group.

The Review Committee asked clarifying questions of the information presented by Mr. Torma and Ms. Seidner. Mr. Torma provided additional information on the massacre of 1860. Ms. Seidner stated that Indian Island was sacred to the Wiyot Tribe because it is the birthplace of the tribe and center of its world. Since the purchase of the Tuluwat Shell Mound Site in 2000, the Wiyot Tribe has purchased additional land on the island. Ms. Farm asked what Ms. Seidner's relationship was to Winnie Buckley and Julia Gates. Ms. Seidner stated that Winnie Buckley was her great-grandmother. The bluebird and yellow hammer headdress, the condor feathers, the pipe and scabbard, the belt, and the deerskin were Winnie Buckley's (item numbers 27068-27073). Mr. Lyons asked if the objects were needed for use by a traditional Native American religious leader in a traditional Native American religious practice by present day adherents involving the continued observance or the renewal of a traditional Native American religious ceremony. Ms. Seidner stated that, yes, they were. Mr. Lyons asked if he had stated all of the required elements. Ms. Mattix confirmed that he had. Ms. Edgar asked for clarification of the temporal aspects of sacred objects and objects of cultural patrimony. Ms. Mattix reviewed the definitions.

Mr. O'Rourke asked for clarification of a statement in the record from a survivor of the Massacre that the ceremony had ended, although a storm caused some to remain on the island. Mr. Torma stated that the Wiyot Tribe felt that the context of the statement meant that the ceremony was over for the day but did not mean that the ceremony had ended. Mr. Titla stated that, in Apache culture, if a ceremony is interrupted, it needs to be completed; otherwise, the ceremony has not yet ended. The Apache would complete the ceremony when they could get all of the ceremonial elements and objects together again. In addition, according to the Apache way, there are certain items that cannot be alienated by individuals. Mr. Titla stated that the documentation supports the claim of the Wiyot Tribe in the manner required by the definitions. Mr. Titla stated that he wished Mr. Jacobs was available for questions.

Mr. Lyons stated that, in Mr. Jacobs' absence, he would make the following comments on the issue, as a museum professional and professional anthropologist:

- The Hearst Museum repeatedly rues the absence of Wiyot specific data, and resorts to using the Yurok as an analogy. There is contradictory information in the anthropological record about the similarities between the Wiyot and the Yurok and about the statements relevant to this case.
- The Hearst Museum questions whether the doctor is required to conduct the dance, despite specific indication in a number of written sources. Mr. Lyons stated that in his experience, traditional religions have an order to their ceremonies, with certain steps required to be completed to have the proper results.
- The Hearst Museum questions the degree to which the reinstituted ceremony will resemble its pre-Massacre form as a key consideration in the decision. This is not addressed by NAGPRA and should not be an issue.
- The Hearst Museum references a joint curation agreement, but does not provide details of the proposed agreement or information on how the agreement would benefit the parties.

Mr. O'Rourke stated that when he read Kroeber's note "she won't sell," he felt Kroeber was referencing the single inlaid pipe, which is a different interpretation than that presented by Mr. Torma. Mr. O'Rourke asked if additional doctoring regalia were present within the tribe in the early part of the twentieth century. Ms. Seidner stated she did not know, other than the fact that she witnessed practicing Indian doctors who used regalia her childhood. Mr. Torma stated that there is one set of regalia on display at the Ferndale Museum, which is privately owned.

Review Committee Motion

Mr. Titla made a motion that the Review Committee makes a finding of fact that the shamans' regalia meet the definition of objects of cultural patrimony and the definition of sacred object, that the right of possession is in the tribe, and recommends that the shamans' regalia be returned to the tribe. Mr. O'Rourke seconded the motion. Following discussion to clarify the motion by separating the finding on sacred objects and objects of cultural patrimony, Mr. Titla made a motion to withdraw the previous motion. Mr. O'Rourke seconded the motion to withdraw. The motion to withdraw passed by a vote of five in favor (Edgar, Farm, Lyons, O'Rourke, Peters) to one against (Titla).

Ms. Farm asked about a comment attributed to Ted Hernandez, Wiyot Tribe, "No one knows what the Wiyot dances were like. We've lost that memory, so we are learning from a Yurok dancer. We are figuring out how to do it." Ms. Seidner stated that Mr. Hernandez is a member of the tribe who was raised elsewhere. Ms. Seidner stated she did not agree with the statement. While the influence of Europeans did result in a lessening of overt cultural practices, the Wiyot Tribe retained knowledge and taught traditional practices to the youth in different ways. Mr. Torma added that more recent transmission of tradition is very open, and that any information passed along by Elders at this point is retained. (At this point, Mr. Titla excused himself for the remainder of the meeting.) Ms. Edgar stated that in her opinion, the objects are not objects of cultural patrimony but are sacred objects, because they are needed for current ceremonial practice.

Review Committee Motion

Ms. Edgar made a motion that the Review Committee find that these objects are not objects of cultural patrimony under the law. Ms. Farm seconded the motion. Ms. Edgar added that at the time of collection, the objects were not in use in their traditional way. In addition, Ms. Edgar stated that she felt that some references in the provided material were to objects not included in this claim. Mr. Lyons stated that he agreed. Mr. O'Rourke stated the idea of healer-to-healer transfer was indicative of a tribal ownership, as opposed to individual ownership. Mr. O'Rourke called the question. The motion passed that the objects are not objects of cultural patrimony by a vote of three in favor (Edgar, Farm, Lyons) to two against (O'Rourke, Peters).

Review Committee Motion

Mr. Lyons made a motion that the Review Committee find that the objects are sacred objects. Mr. O'Rourke seconded the motion. The motion passed that the objects are sacred objects by a vote of four in favor (Edgar, Lyons, O'Rourke, Peters) to one against (Farm).

Presentation: University of Oklahoma Sam Noble Oklahoma Museum of Natural History

Presentation

Mr. Marc Levine, Curator of Archeology, Sam Noble Oklahoma Museum of Natural History (Sam Noble Museum), provided an update on the museum's NAGPRA implementation. Mr. Levine was joined by Ms. Susie Fishman-Armstrong, Archaeology Collections Manager; Mr. Paul Sandberg, Physical Anthropologist; and Mr. Michael Walters, Graduate Research Assistant. Mr. Levine summarized the museum's NAGPRA progress. The Sam Noble Museum was included in the November 2nd, 2015 report, Museums and Federal Agencies Whose Culturally Affiliated Inventories Include the Human Remains of Individuals That Are Not Yet Represented in Notices of Inventory Completion. At the 2014 NAGPRA Review Committee meeting in Washington, DC, Ms. Susie Fishman-Armstrong provided a statement summarizing the state of NAGPRA compliance work at the Sam Noble Museum. In 1993, a summary was submitted, and in 1995 inventories and draft Notices of Inventory Completion were submitted. These draft notices were not published, as it was later determined that the minimum number of individuals and associated funerary objects were inaccurate due to the use of primary records rather than physical counts. In addition, there was a misconception among staff that the notices did not have to be published until repatriation requests were made. Consequently, the draft notices were withdrawn in 2006. In 2014, Ms. Jan Bernstein, Bernstein & Associates, was hired as a consultant to help develop and write a NAGPRA compliance strategic plan. That plan was completed in February of 2015. The strategic plan provides a roadmap for publishing Notices of Inventory Completion for all culturally affiliated and culturally unidentifiable human remains and associated funerary objects under the control of the Sam Noble Museum within 10 to 12 years.

In 2015, the Sam Noble Museum received a NAGPRA consultation and documentation grant to complete an inventory of human remains representing, at minimum, 279 individuals and over 1,700 AFOs from 49 different

archeological sites in Oklahoma. A searchable, archive database was implemented that works in conjunction with a new collections database. In fall 2015, Mr. Michael Walters was hired as a graduate research assistant to assist Ms. Fishman-Armstrong with the inventory of AFOs. In January 2016, the museum hired Mr. Paul Sandberg to conduct the inventory of human remains. Since September 2015, information for all 49 sites, including 65 collections, has been entered into the new database. These collections comprise nearly 13,000 records, and contain over 110,000 artifacts, both AFOs and non-AFOs. All archeological material from these sites is being reassessed to ensure that no human remains and no AFOs are missed. As of June 23, 2016, a minimum of 132 individuals and over 3,800 AFOs in 37 of these collections have been physically inventoried. Mr. Levine stated that halfway through the project, the AFO count is double the original estimate, highlighting the importance of reevaluating collections associated with each site. As the project progresses, the number of individuals and funerary objects will continue to be adjusted.

In October 2015, The Chickasaw Nation submitted a claim for culturally unidentifiable human remains and AFOs from their tribal land in Southern Oklahoma. Following consultation and the publication of a notice, on May 30, 2016, a minimum number of 15 individuals and 69 AFOs were transferred to The Chickasaw Nation for reburial. This is the first disposition of culturally unidentifiable human remains under 43 CFR 10.11 completed by the Sam Noble Museum. In early 2016, the Sam Noble Museum consulted with the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma on a new collaborative NAGPRA project to facilitate the repatriation of, at minimum, 381 individuals and over 1,200 AFOs that were removed from 35 archeological sites in Oklahoma. The project will be supported by a NAGPRA grant. Mr. Levine expressed appreciation for this financial support, and stressed the importance of NAGPRA grants for completing the project. The Sam Noble Museum is committed to fulfilling its obligation to comply with NAGPRA.

Review Committee Questions and Discussion

The Review Committee commended the Sam Noble Museum for their progress in NAGPRA implementation. Mr. Minthorn stressed the importance of ongoing and continued consultation, communication, and meetings with Indian tribes. Mr. Levine stated that the Sam Noble Museum is committed to regular consultation with Indian tribes, and described an upcoming consultation visit.

Presentation: Klamath Tribes

Presentation

Mr. Perry Chocktoot, Director, Culture and Heritage Department, Klamath Tribes, stated he is a great-great grandson of two signers of the Treaty of October 14, 1864 (ratified by the Senate on July 2, 1866) and a great-great grandson of a signer of an 1865 treaty. Mr. Chocktoot is a former tribal council member and former chairman of the Inter-Tribal Fish and Water Commission. The Klamath Tribes' traditional lands include largest lake in the state of Oregon. Following European settlement and repurposing of adjacent land for farming, fluctuating water levels have resulted in hundreds of ancestors being removed and taken to a university in California. Mr. Chocktoot described the Modoc Wars and the subsequent exile to Oklahoma of some of the Modoc people. The Klamath Tribes' Federal recognition was terminated in 1954, and reservation lands were subsequently lost as a result. The Klamath Tribes re-established Federal recognition in 1986 under the Klamath Restoration Act, and are working to take care of their ancestors.

Mr. Clayton Dumont, member of the Klamath Tribes and Professor of Sociology, San Francisco State University, stated he has researched NAGPRA for over 15 years and is honored to help his tribe with this process. Mr. Dumont stated that at the Phoebe Hearst Museum, the Klamath Tribes have identified the remains of 81 Native American individuals that were removed from lands ceded under the Treaty of 1864. Although many of them are under the control of Federal agencies, the Hearst Museum unilaterally determined all 81 individuals to be culturally unidentifiable. Repeated requests for consultation information have resulted in little or incorrect information. The record indicates that the Hearst Museum consulted with a nontribal member hired by the Klamath Tribes to do work not related to NAGPRA, and was not a valid NAGPRA consultation. Moreover, in its records, the Hearst Museum lists scientific evidence as the basis for its cultural affiliation determinations, even though folkloric evidence has been presented to it by the Klamath Tribes.

In the process of determining cultural affiliation of the 81 individuals, Mr. Dumont worked with Mr. Tarler (National NAGPRA Program). Mr. Dumont found that the Bureau of Reclamation (BOR) has control of 3

individuals and 1 AFO, Lava Beds National Monument has control of 18 individuals and AFOs, the U.S. Fish and Wildlife Service has control of 47 individuals and AFOs, and the Phoebe Hearst Museum has control of 13 individuals. With the help of Ms. Melanie Ryan, BOR, the process is moving forward and the BOR now has possession of two of the three individuals and one funerary object; the third individual, a child, is listed as “not been located for over 20 years.” Lava Beds National Monument has acknowledged cultural affiliation of the 18 individuals and AFOs, and the Klamath Tribes hope to proceed with their reburial this fall. In April 2015, the U.S. Fish and Wildlife Service acknowledged the cultural affiliation of the 47 individuals with the Klamath Tribes is strongly indicated in April of 2015; the Klamath Tribes submitted a formal claim on November 9, 2015. Subsequent attempts by the Klamath Tribes to move the process forward have been unsuccessful. The Hearst Museum continues to maintain that the 13 individuals in its control are culturally unidentifiable. A consultation meeting was held with the Hearst Museum on August 27-28, 2014, and a written request for repatriation was submitted by the Klamath Tribes to the museum on October 17, 2014. Multiple requests for sketches, diagrams, demonstrations of basketry techniques, and bibliographic sources have been directed to the Hearst Museum. Mr. Dumont stated that, although not extensive, the existing information in the possession of the museum points definitively to a cultural affiliation of the human remains with the Klamath Tribes. The Hearst Museum refers repeatedly to these requests as “further consultation,” and cites the Kennewick Man/Ancient One case and the court’s restricted and limiting definition of Native American in support of its decision. Mr. Dumont stated that, given the Klamath Tribes’ experience with Federal agencies, any new regulations need to contain specific timelines for initiating consultation.

Ms. Melanie Ryan, Regional NAGPRA Coordinator and Physical Anthropologist, Bureau of Reclamation, Mid-Pacific Region, provided additional background on the history of the three individuals and one AFO under the control of BOR. After consultation, a decision was made to transfer the collection (minus the missing individual) from the Hearst Museum to the BOR, which was done in December 2015 and March 2016. The collections are stored in a manner described by Mr. Chocktoot. Ms. Ryan described the information used to determine cultural affiliation, including aboriginal occupation, oral tradition, and other expert evidence showing a relationship of shared group identity between the human remains and AFOs removed from these sites and the Klamath Tribes.

Review Committee Questions and Discussion

Mr. O’Rourke thanked the individuals for their presentations, and asked if the BOR was aware of these items at the Hearst Museum. Ms. Ryan stated that prior to the Klamath Tribes’ identification, the BOR was not aware of the collection. Mr. Dumont stated that the Klamath Tribes would not have been aware of these ancestors without the use of the database of culturally unidentifiable human remains on the National NAGPRA Program website. Mr. Dumont stated the identification process spanned at least two years and took a considerable number of hours. Mr. Minthorn stated that Klamath Tribes’ work with the Federal agencies seemed to be good, but Mr. Dumont’s comments indicate a problem with the Hearst Museum in general and with the U.S. Fish and Wildlife Service on consultation. Mr. Minthorn asked Mr. Dumont to reiterate his request. Mr. Dumont stated that the Klamath Tribes is requesting the Review Committee to facilitate these human remains coming home and to send a loud and clear message to the Hearst Museum to do what is right. Mr. Dumont emphasized the importance of this return. Mr. Lyons stated that, even in light of comments made at the meeting, it was important to address these issues on a case-by-case basis and not be unfairly prejudicial to any party. Ms. Farm asked for copies of the presentation by Mr. Dumont and Ms. Ryan.

Presentation: University of California, Davis

Presentation

Ms. Megon Noble, NAGPRA Project Manager, University of California, Davis (UC Davis), provided an update on NAGPRA compliance. Ms. Noble stated that the University of California Davis is one of the ten campuses within the University of California system. Each campus operates as a distinct entity subject to the authorization and oversight of the Office of the President, with distinct NAGPRA projects. UC Davis is situated approximately 15 miles west of Sacramento, on the ancestral homelands of the Patwin people. The Department of Anthropology Museum curates archeological and ethnographic collections with a primary focus on central California, and houses approximately 300 sets of human remains and over 12,000 funerary objects. The Department of Anthropology Museum reported relevant summaries and inventories to potentially affiliated tribes and the National NAGPRA Program by their respective 1993 and 1995 deadlines and, subsequently, by the deadlines established in 43 CFR 10.13, the future applicability regulations. The campus is in the process of consulting and reporting newly discovered human remains and newly acquired collections.

A campus NAGPRA Advisory Committee is appointed and actively chaired by the provost. The committee's charge is to address the university's overall NAGPRA compliance, with special consideration of the 43 C.F.R. 10.11 regulations on culturally unidentifiable human remains, and an emphasis on creating a proactive consultation process. This committee includes campus representatives from a number of disciplines, as well as representation from three local Indian tribes, and serves in an advisory capacity to the provost. In 2013, the advisory committee recommended creating a position solely dedicated to NAGPRA. The NAGPRA Project Manager position was filled in 2014. The NAGPRA project is supervised by the provost, and the assistant executive vice chancellor, and is autonomous from any of the campus museums. Ms. Noble described staff changes at UC Davis that will help further the campus's NAGPRA compliance goals.

UC Davis is dedicated to working with tribes to resolve collections for which a cultural affiliation determination was made and a notice published, but which have not yet been requested. Ms. Noble described various reasons found for this lack of requests, including lack of financial resources, lack of existing intertribal agreements for individuals culturally affiliated with multiple tribes, and lack of familiarity with the NAGPRA process. Other tribes have yet to make a decision on the preferred outcome regarding transfer of control and physical custody, or are waiting to complete the process with other institutions for collections from the same site. UC Davis is working with tribes to identify and address these challenges.

UC Davis is working to resolve human remains currently housed at the campus that had not previously been reported in inventories. Ms. Noble described the process and resulting repatriations for these newly discovered collections, some of which were found in a reexamination of all previous collections associated with prior Notices of Inventory Completion. For six out of the seven sites reviewed, additional human remains were located in unsorted bags of faunal remains. UC Davis is consulting with tribes on these human remains, and will complete revised inventories and correction notices. UC Davis is also working to reexamine the campus's 1995 cultural affiliation determinations, through active consultation and by hiring consultants with specialties in linguistics, bioanthropology, and anthropology. Ms. Noble stated that, in some cases, consideration of new evidence may reverse prior determinations. Much of this work is aided by NAGPRA repatriation and consultation/documentation grants.

Over the course of the last year, UC Davis has been developing a campus NAGPRA policy, in addition to the state system-wide policy requirements. The campus policy is currently in draft form and under review. The intent of the campus policy is to detail relevant authorities and responsibilities within the campus, and outline policy for UC Davis where it has discretionary authority under NAGPRA or where UC Davis's authority is not directly addressed by NAGPRA. The campus policy addresses the culturally unidentifiable associated funerary objects, requests by nonfederally recognized tribes, research on human remains and cultural items subject to NAGPRA, and the status of analytical samples extracted from human remains. At the request of California Indian tribes, the inclusion of funerary objects in dispositions of culturally unidentifiable Native American human remains was researched and considered. Ms. Noble described the research and stated that it indicated an overwhelming trend to follow the recommendations provided in the regulation, and voluntarily include associated funerary objects with culturally unidentifiable human remains. UC Davis's draft NAGPRA policy states that in recognition of the connection between Native American human remains and funerary objects, the campus, as a matter of policy, intends to offer culturally unidentifiable associated funerary objects to Native American tribes if requested, pending review and approval by the Office of the President. The draft policy includes a provision that valid claims by nonfederally recognized tribes will generally be recommended for disposition if no federally recognized tribe requests control or no affiliation is ascertained, and expands the requirement to seek input from tribes regarding research on culturally unidentifiable human remains and funerary objects. UC Davis will share the draft with all consulting tribes. Review by campus faculty and administration is underway, with the aim of formal adoption of the policy this year.

During a previous presentation, Ms. Noble received inquiries by the Review Committee. One Review Committee member requested updates on UC Davis's interaction with Federal agencies. Ms. Noble stated that UC Davis holds Native American human remains on behalf of the BOR, COE, Fish and Wildlife Service, and the BLM. The BLM is responsible for the majority of NAGPRA collections from Federal agency land housed at UC Davis. The Bureau of Reclamation, the NAGPRA project, and the Department of Anthropology Museum recently established a working agreement. The three parties have a positive working relationship, and are working cooperatively towards shared NAGPRA goals. Preparations are underway to reinstate consultation with potentially affiliated tribes. The other Federal agencies that are aware of their NAGPRA responsibilities are in various stages of compliance. Another

Review Committee member requested information about the University of California's system-wide committee, and its ability to adhere to timeframes designated in the regulation. Ms. Noble reported that the two inventories and notices recently submitted by UC Davis to the Office of the President were reviewed by the committee in a timely manner.

Ms. Noble stated that the UC Davis has established a strong foundation for NAGPRA compliance efforts; allowed tribal communities the time to conduct inter- and intra-tribal discussions; and remains highly committed to supporting a NAGPRA program that is proactive, transparent, and focuses on improving relationships with tribal communities, while carefully balancing its responsibilities to tribes, its students, its faculty, and the State of California.

Review Committee Questions and Discussion

The Review Committee thanked Ms. Noble for her thorough and positive update. Ms. Farm asked for a copy of her presentation.

Public Comment – July 15, 2016

Lourdes Henebry-DeLeon

Ms. Lourdes Henebry-DeLeon, NAGPRA Program Manager, Central Washington University (CWU), provided an update on NAGPRA implementation. CWU has a small ethnographic collection, which includes human remains. In 2008, in consultation with the Columbia Plateau Tribes, CWU created a more visible, participatory inventory process. Ms. Henebry-DeLeon described the process in detail, which includes culturally affiliated tribal representatives in all phases of the osteological analysis. Traditional cultural practices of the tribes are considered and followed during the process. The result is a thorough inventory and records analysis; more timely notice publication and repatriation; and productive, respectful working relationships. Ms. Henebry-DeLeon stated that CWU has a positive relationship with the BOR. In addition, Ms. Henebry-DeLeon works as a resource for the Columbia Plateau Tribes in consultation with other institutions and Federal agencies.

Ms. Jan Bernstein

Ms. Jan Bernstein, Bernstein & Associates, introduced her new associate, Ms. Claire Wilbert. Ms. Bernstein stated that Ms. Wilbert is based in Seattle, WA, and works with Ms. Bernstein to help bring NAGPRA clients into compliance. Ms. Bernstein stated that she was grateful for the funds that were made available for National Preservation Institute (NPI) NAGPRA trainings, which will shortly be fully utilized. Ms. Bernstein stated that perhaps the Review Committee could recommend that the National NAGPRA Program gather statistics on the effectiveness of the NPS trainings, specifically concerning any increase in grant applications by prior training attendees and resulting awards.

Review Committee Questions and Discussion

Ms. O'Brien stated that the National NAGPRA Program would continue to make information on the NPI trainings available through its annual reports. Ms. Edgar stated that it might also be valuable to gauge long-term retention and application of information, as reflected by repatriation, notice publication, and consultation. Ms. Edgar stated that as a primary instructor for the NPI, Ms. Bernstein was in a unique position to gather this information by reviewing past course evaluations and contacting students for evaluation updates. Ms. Bernstein stated she would consider doing so.

Mr. Alvin Windy Boy

Mr. Alvin Windy Boy, Tribal Business Committee and former Chairman, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana, stated he does cultural resource preservation work for his tribe. Mr. Windy Boy stated he was fortunate to be a part of several repatriation processes with the University of Michigan and several Michigan tribes. Mr. Windy Boy stated that tribal populations are growing; his tribe now has close to 9,000 enrolled members and still maintains their language and the majority of their traditional ceremonies. The tribe has no reburial process; once a life is complete and songs are sung, then it is done. While it is good that the tribes are involved in the NAGPRA process, many tribes do not have sufficient resources to support the work.

Seeing what other tribes go through, how regulations and laws affect what they can and cannot do, shows how important it is for tribes to change the laws to positively impact those who need help. Consultation is important, and

every tribe has its own process. Mr. Windy Boy stated that his tribe has worked to maintain and update its website, and conduct cultural resources work electronically. It is important that Indian tribes be recognized as an important source of knowledge on their history, culture and traditions; otherwise, misinformation can spread until it is considered fact. Mr. Windy Boy stated that, in his experience, consultation is still difficult with most Federal agencies with the exception of the Federal Communications Commission.

Ms. Amanda Cervantes

Ms. Amanda Cervantes stated she graduated in anthropology from the University of Montana. Ms. Cervantes thanked the Review Committee for the opportunity to learn about this issue.

Discussion: Upcoming Meeting Dates and Locations

Ms. O'Brien asked the Review Committee to consider possible dates and locations for its 2017 spring and fall meetings. The Review Committee has open invitations from: History Colorado, in Denver, CO; Western New Mexico University; the Pyramid Lake Paiute Tribe in Reno, NV; the Blue Lake Rancheria in northern California; Indiana University in Bloomington, IN; and Choctaw, MS. Following discussion, Ms. O'Brien agreed to look into Denver, CO for the spring 2017 meeting and Alaska or Washington, DC for the fall 2017 meeting. Ms. O'Brien stated that the next two telephonic meetings of the Review Committee will be September 13, 2016 and December 6, 2013.

Subcommittee Discussions and Appointments

As Mr. O'Rourke's term expires in early 2017, the Review Committee members discussed membership of the subcommittee on the report to Congress for 2017. After discussion, the Review Committee agreed on the following subcommittee appointments:

- Subcommittee on the report to Congress for 2016: members O'Rourke, Lyons, and Peters
- Subcommittee on the report to Congress for 2017: members Lyons, Edgar, and Peters (through term expiration September 2017, unless reappointed)
- Subcommittee of the whole (which can communicate to discuss outstanding issues and report back to the full Review Committee at regular meetings)

Action Item: Discussion of the Review Committee 2016 Report to Congress

Mr. O'Rourke stated that the subcommittee will draft the 2016 report to Congress, utilizing the format initiated in the previous report. The Review Committee discussed potential ideas for the report with the following considerations:

- Highlight both successes and barriers involving NAGPRA implementation presented to the Review Committee using real examples, such as the successes of the Colorado Lands Repatriation and Reburial Workgroup and the BLM Wyoming State Office, and the challenges faced by the SRPMIC and the Four Southern Tribes of Arizona, as well as specific barriers encountered in working with specific museums and Federal agencies.
- Incorporate suggestions for improvements, such as the Alaska Federation of Natives resolution and the recommendation from the Klamath Tribes that the NAGPRA regulations include certain deadlines.
- Expand on the reality of funding limitations with examples of inadequate infrastructure or funding, with specific examples of difficulties experienced due to lack of financial resources. Include information on total grants requests compared to actual grants funding.
- Include the issue of Federal agency collections in nonfederal repositories, including the DOI Museum Program collection survey and the Klamath Tribes' experience in identifying collections through the culturally unidentifiable human remains database.
- Focus on wider distribution of the report to include elected tribal officials, tribal historic preservation officers, intertribal organizations, and museum and scientific organizations.

Action Item: Outstanding Meeting Items

Following discussion, the Review Committee noted several items that warrant future consideration:

- Regularly send a letter inviting Federal agencies to report to the Review Committee – Ms. O’Brien stated that several agencies provide consistent updates, and asked the Review Committee to identify others of particular concern. In addition to regular reporting agencies, Mr. Minthorn mentioned U.S. Fish and Wildlife Service. Ms. Farm suggested including positive reporting examples in the letter as a way of challenging other agencies to reach a successful reporting level. Ms. O’Brien stated she would send a letter on the Review Committee’s behalf.
- Updates on the requests and presentations heard at the meeting – requests by Pueblo of Santa Ana, New Mexico, and the Wiyot Tribe, California; the CUI disposition agreement request; the Office of State Archaeology at the University of Iowa; and the presentation on ongoing issues related to Federal agency collections in nonfederal repositories, specifically involving the BIA and BLM.
- Request for the DFO to ensure six-month follow up with Missouri SHPO regarding The Osage Nation finding.
- While the Review Committee agreed that the overall tone and timing of the comments by Mr. Jordan Jacobs of the Phoebe Hearst Museum were disrespectful to the Wiyot Tribe, the Review Committee and others present at the meeting, they acknowledged that Mr. Jacobs had the right to offer his comments. The Review Committee agreed to consider the concerns in an objective and critical manner, in order to identify areas for potential improvement. Mr. Minthorn stressed the importance of the NAGPRA process, and of not allowing the actions of some to jeopardize the work of all.

Closing Comments

Mr. Minthorn thanked the National NAGPRA Program staff and those present for their work. Ms. O’Brien thanked the Review Committee members, National NAGPRA program staff and counsel, and those in the NAGPRA community for all of their hard work.

Traditional Closing

Mr. Armand Minthorn and Ms. Rosemary Caye offered a traditional closing.

Meeting Adjournment

The meeting was adjourned at 11:55 a.m., Friday, July 15, 2016, by Mr. Minthorn.

Certified –

Melanie O'Brien

Ms. Melanie O'Brien
Manager, National NAGPRA Program
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

October 11, 2016

Date

Approved on behalf of the Review Committee –

Armand Minthorn

Mr. Armand Minthorn
Chair, Native American Graves Protection
and Repatriation Review Committee

October 11, 2016

Date